Vol. II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1943

No. 409

TENNESSEE COAL, IRON & RAILROAD COMPANY, SLOSS SHEFFIELD STEEL & IRON COMPANY, AND REPUBLIC STEEL CORPORATION, PETITIONERS,

vs.

MUSCODA LOCAL No. 123, ETC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 4, 1943.

CERTIORARI GRANTED NOVEMBER 15, 1943.

VOLUME II

TRANSCRIPT OF RECORD

UNITED STATES

CIRCUIT COURT OF APPEALS

FIFTH CIRCUIT

No. 10278

TENNESSEE COAL, IRON & RAILROAD COMPANY,
Appellant,

vs.

MUSCODA LOCAL No. 123, I.U.C.E.U. & M.,
Appellee.

LOSS SHELTERED STEEL & IRON COMPANY,
Appellant,

vs.

LOSS REDEMPTORIST LOCAL No. 1098, I.U.C.E.U. & M.,
Appellee.

REPUBLIC STEEL CORPORATION,
Appellant,

vs.

RAYMOND LOCAL No. 12[illegible], I.U.C.E.U. & M.,
Appellee.

Appeals from the District Court of the United States for the Northern District of Alabama.

ORIGINAL RECORD RECEIVED APR 1 [illegible]

The Court:

I sustain the objection.

Q. All right, sir. Now, you said that the walking down the slope continued at Ishkooda until what date?

A. Approximately 1923. They did not walk the slope. They walked a manway which was parallel to the slope.

Q. Parallel to the slope?

A. Yes, sir.

Q. I see. All right, sir. Now, as you go down the slope, the headings are turned off on both sides, or only to the right, which is it?

A. On both sides.

Q. On both sides?

A. Yes, sir.

Q. What is the heading, Mr. Ball?

A. The heading is the entry turned off from the main slope, or, if the basin is reached, it is the heading turned off from your main haulage way which takes the place of the slope.

Q. Would you indicate there on that little sketch where the headings would run in connection with that sketch?

A. If it were the main slope going down this way—

Q. Yes.

A. This would be called a heading.

Q. I see. All right. Now, as I understand it, your entrance to the mine—if this were the first heading,—would be here?

A. Yes, sir.

Q. Then you would drive the slope down and turn the heading off to the right to strike the ore?

A. Yes, sir.

Q. This heading—you have drags in there to haul the ore?

A. Yes, sir.

Q. And your face would be here?

A. You would mine between this heading and this one above.

Q. You would take the ore out here?

A. Yes, sir.

Q. As the mine progressed and the slope extended further down, other headings would be driven off?

A. To the right and left.

Q. So the length of travel down the slope depends on what heading the man was going to and how many headings there were?

A. That is right.

Q. If John Jones was working in Number 1 heading his travel distance would be shorter than Bill Smith's, who worked in number 2 heading?

A. That is right, and so on on down.

Q. And so on on down?

A. Yes, sir, and when the basin is reached this would be your main haulage way, and you turn your levels off from the main haulage way, and the same thing would apply.

Q. As I understand, when your headings are turned off, the first heading would be the closest one to the slope?

A. Yes, sir.

Q. Then you advance this face?

A. Yes, sir, and leave a pillar and make another opening over here.

Q. And that goes on as far as the heading extends?

A. The limit of mining for that mine.

Q. So Bill Smith, if he worked in the first heading of that slope would have a less distance to go than John Jones who worked in the next heading?

A. Yes, sir.

Q. And so on as the headings were extended?

A. Yes, sir.

Q. Yes, and I will ask you if it isn't also true that Bill Smith,—I am using him as an illustration,—

A. Yes.

Q. —does he continue to work every day in the same heading, or he may work in different headings on different days, or not?

A. As a rule we try to keep our crews in the same heading, but over a period, a pay period, a man may work in one or two or sometimes three working places. That applies especially to section helpers and employees of that type.

Q. The men we have been talking about so far of the Tennessee Company, trying to get a general picture of it, is the productive employees?

A. Yes, sir.

Q. I wish you would tell the Court where the working place of the service crews is?

A. The service crews are the men who do the timbering, laying tracks, building the chutes for the ore, and they operate all over the mine.

The Court:

They operate the haulage—

The Witness:

Yes, sir, the motormen run over the mine.

Q. The machinists, electricians?

A. Yes, sir, the machinists, electricians, pipe men.

Q. What do they call—what do you call the method of mining you have just described there? What is the name for it?

A. I call that a modified room and pillar plan. Your room is the stope, and your little pillars at the side with the big pillars between the stopes,—modified room and pillar system.

Q. In your operations I have been asking you about prior to May 1, 1941, are they worked out on any particular cycle?

A. As a rule—well, in fact, it is a rule where your mines are operating under normal operations and regularly, your cycle of driving this heading here and getting ready for another stope while this is being mined out is generally around three and a half months.

The Court:

You mean that is all the time it takes you to work that out?

The Witness:

Yes, sir, three and a half months.

The Court:

You run that heading over to another stope?

The Witness:

No, sir; we keep extending this to the limit of our mine.

Q. From the same heading?

A. From the same heading. These pillars in here bear anywhere from 60 to 80 feet. These pillars here are from 80 to 120 feet. We maintain a factor of safety on these pillars here of 4.3.

Q. Mr. Ball, for example, this stope here, as the cycle advanced that would be worked out and these men would go to another stope?

A. They would come over here and go in this stope right here which is a continuation.

Q. Which shows a man—his difference in traveling time is covered in the individual differences in these relationships all the way through?

A. Yes, sir.

Q. As you have told me?

A. That is right.

Q. In your operations how many turns do you count on for the average condition you have described?

Mr. Harris:
I don't understand what you mean by turns.

The Court:
I don't either.

Mr. Burr:
Some call it shifts. It is the same thing.

A. I see what you mean. In twelve turns, about a payroll period, you generally encounter average conditions in a normal stope.

The Court:
I understand that.

Q. Explain that to him, Mr. Ball.

The Court:
I don't know what the idea is.

A. For instance, in an average of around twelve working turns, this face is being driven; they shoot in this face, and you drive. These places are being driven up around pillars. These little places are known as inter-stope pillars. This part here, you take it out in these locks like that. You generally get an average condition in driving this face and driving this stope in about—an average of about twelve turns.

I might explain in starting out—

Mr. Harris:
If you will tell me what a turn is —

Mr. Burr:
A shift.

The Witness:
A shift.

Mr. Burr:
Eight hours.

The Witness:
Eight hours, a mine turn, working day

The Court:
That is a shift.

The Witness:
That is a shift. This next stope would look like this: Here is your heading coming along here. These little upsets are broken off like this (indicating on diagram), and then the miner comes in here and drives in approximately twenty feet and you begin to widen your place into these places and widen out until you finally get the entire stope here. These are interstope pillars. That would correspond to this pillar here and this to that pillar there. The average is about 80 feet. This pillar remains there to support your roof so there is no danger of large falls of ground,—just local falls.

Q. Can you tell us approximately what the amount of red ore was in tons that you produced last year, for instance, for your normal operating requirements?

A. Around four and three-quarter million tons approximately.

Q. I have stated here in the bill about 360,000 net tons. Is that approximately correct or not?

A. You mean per month?

Q. Yes, per month.

A. We averaged around 366,000 tons per month.

Q. Per month?

A. Something like that.

Q. And about how many tons of limestone?

A. Around 20,000, roughly.

Q. I see. Now, prior to the time I have asked you about, how many turns, or, we will call them shifts,—that seems to be the general—the used word,—better known that way. How many shifts do you operate in those mines, or did you operate in those mines?

Mr. Brodie:

I object to that question, if Your Honor please. I don't know as to what time reference is made.

Mr. Burr:

I have made that clear.

The Court:

I assume he means for 24 hours. Is that right?

Mr. Burr:

Sure.

Mr. Harris:

What Mr. Brodie meant is what year?

Mr. Burr:

I said all these questions were prior to May 1, 1941.

Mr. Harris:

He has been out there 25 years. I don't know whether he means the last three or four years or—

Q. We will start with the year prior to May 1, 1941. How many shifts per twenty-four hours did you operate out there?

A. Two.

Q. How many years behind that did you operate the two shifts?

Mr. Brodie:

If your Honor please, for the purpose of the record, I interpose an objection to the testimony. I understand this is out of place, because we have been denied the information we asked for in our interrogatories about costs.

The Court:

Overruled.

Q. Go ahead.
A. For a good many years we have worked two.
Q. About how many years, in your knowledge?
A Oh, it goes back to 1914.

The Court:

As I understand, this has a bearing on the practices of the company?

Mr. Burr:

Yes, sir. That is what I am showing it for.

Q. Now, the iron ore and limestone you extracted from those mines, what was done with it; where was it sent to and how used?

A. The iron ore was shipped to the blast furnaces to be made into pig iron, and the limestone was shipped to the open hearth furnaces to be used in making the steel.

Q. Was the pig iron used for manufacturing products—

A. How is that?

Q. Was the pig iron used in making finished products?

A. Yes, sir; it was used in making steel, from which they make the finished products.

Q. About how far do you have to ship the ore before it reaches the company's blast furnaces; about what is that distance?

A. About four and a half miles.

Q. Are you acquainted with the location of the coal mines of the company?

A. I am.

Mr. Brodie:

I object to that, if Your Honor please. It is immaterial and irrelevant.

The Court:

I don't know its materiality.

Mr. Burr:

Of course, it is material. We expect to prove the coal mines are underground mines just like underground ore mines, and that the conditions are similar.

Mr. Harris:

We are not trying coal mines.

The Court:

We are not trying coal mines.

Mr. Burr:

No, sir. Of course, if it is admitted here for the record the only mines we have under consideration are these ore mines, that is perfectly satisfactory to me.

The Court:

That is what I understand.

Mr. Burr:

If they don't propose to travel—talk about Lake Superior—

The Court:

If I don't let you go into it I don't let them go into it.

Mr. Burr:
Metal mines—

Mr. Brodie:
Oh, no.

The Court:
You are trying to confine this to metal mines?

Mr. Brodie:
Yes, sir.

The Court:
In this district?

Mr. Brodie:
Yes, sir.

Mr. Burr:
If it is in this district, I don't care to ask about that.

Mr. Brodie:
May I make a statement about that?

The Court:
He is not going to ask him any more about that.

Mr. Brodie:
May I state for the record I do not agree to the restriction of the evidence to the iron mines in this district.

The Court:
Well,—

Mr. Brodie:
I merely do not wish the record to show I agree—

Mr. Harirs:

Mr. Burr said he was limiting it to this district. We said limit it to iron mines. We didn't say anything about this district.

The Court:

That will come up later. In other words, we are not going into coal mines now.

Mr. Burr:

You mean under Your Honor's interpretation of the issue?

The Court:

That is right.

Mr. Burr:

That is all right if that is Your Honor's interpretation of the issue, but believe me, when they go into gold mines out in the West, I am going into the coal mines which are a few miles from the ore mines; that is, if Your Honor agrees with me.

The Court:

I think we might as well adjourn for lunch now.

Mr. Burr:

That is fine.

The Court:

We will be back at 1:30.

(Whereupon, at 12:30 P. M., July 8, 1941, a recess was had to 1:30 P. M. of the same day.)

After Recess, 1:30 P. M.

744 E. M. BALL thereupon resumed the stand, and having been previously sworn, testified further as follows:

Direct Examination—Resumed.

(By Mr. Burr):

Q. Mr. Ball, in extending the headings and the stopes out from the slope, are they extended an unlimited distance, or does the extension depend upon the ore and also upon the property lines?

A. In some cases the mine is near the property line, and we extend to the property line. In case the ore is all on our property, we extend the line approximately halfway between the two slopes.

Q. Of course, you can't go on the other fellow's property?

A. No, sir. We keep a barrier pillar.

Q. And your company's operations come in contact in that way with the properties of the other companies you mentioned this morning?

A. Yes, sir.

Q. I suppose, Mr. Ball, the conditions as to which you have been testifying are similar to all the Tennessee Company mines?

A. Yes, sir, they are.

Q. By that I mean differences as to the conditions in different mines as to distances and so on?

A. And the extent to which locomotive haulage has been applied.

Q. But your testimony gives a good, general, bird's-eye view of the situation in all the ore mines?

A. Yes, sir, in all eight ore mines.

Q. Now, I will ask you if the company owns and maintains at each division what is called a bath house or a change house?

A. We do. We have one large bath house at Muscoda Division for the employees of Number 4 and 6 and Number 5 limestone mine. At the Wenonah Division we have a bath house at Number 7 mine, and another bath house at Number 8 mine and another bath house between Number 9 and Number 10 mines. We have three bath houses at Wenonah. At the Ishkooda Division we have one bath house for Number 11 mine, and another bath house for Number 13 mine.

Q. Are those bath house of different distances from the mouth of the mines or portals?

A. Yes, sir. They vary—Number 11, I believe, is the shortest distance, about 400 feet from the mine, and Number 6 mine, it is twenty-four or twenty-six hundred feet distant from the bath house.

Q. And the others varying distances between those?

A. Varying distances between those.

Q. Will you describe in a general way one of those bath houses so we can get the picture?

A. At Muscoda, at Number 5 bath house, and at Wenonah, at Number 9, we have what is called the hanger system. The clothes are hung on a hook attached to a chain which can be pulled up. Each man has a place for his clean cloths and his mine clothes. At the other bath houses we have what is called the locker system. Each man has a locker. In addition to that they have toilets and shower facilities for the colored and white. They are separate.

Q. Are those bath house facilities furnished free, or is there a charge made for them?

A. They have been furnished free since about 1922 or '23, somewhere in there.

Q. Previous to that was a charge made?

A. Yes, sir. The charge varied from 50 to 65 cents.

Q Has there been a time when the employees would change at home,—bathe and change at home?

A There are a few of the employees now that bathe at home.

Q In other words, the employees don't have to use the bath house unless they want to?

A No, sir. It is generally more convenient than going home and dirtying up their own homes.

Q Most of them use it?

A Yes, sir, most of them.

Q Previous to the time—when there was a charge made for the use of the bath house, was that charge compulsory or—

A Not sir.

Q Could they bathe at home?

A They could bathe at home.

Q Did many of them bathe at home?

A I should say 95 percent of the men used the bath house.

Q How was the deduction handled, from the payroll?

A Yes, sir.

Q At their request?

A Yes, sir.

Q When the underground man goes to the bath house he changes his clothes and puts on his working clothes which are, either, as I understand it, in this locker, or on this hanger system?

A That is correct.

Q Does he go from there to the entrance of the mine, or does he stop on the way?

A It generally takes them around nine or ten minutes to change, and they walk direct from there to the portal, to the tally house.

Mr Smith

How long did you say that change was?

The Witness:

Approximately nine or ten minutes that it takes the average man to change to his underground clothes.

Q. What sort of individual lights, during the time we have been inquiring about, did the men use in the mines?

A. They used the regular miners' carbide light.

Q. Who owned the light?

A. Each man owns his own light.

Q. The carbide, as I understand it, was in a cap—a little can on top of the cap?

A. Yes, sir, a little cap,—either hold it on his cap or by a hook which was on the lamp.

Q. How does that carbide come, does it come in—

A. Comes in hundred pound drums made out of sheet steel, and it is issued to the miners in one-pound cans.

Q. Whereabouts does the miner get his carbide for his lamp?

A. At the tally house at each division except at the Muscoda Division for a time that carbide was issued at the wash house for the convenience of the men. It is all issued at the tally house.

Q. In getting the carbide, does the man get it every day or does the can he gets supply him for two or three days or longer than that?

A. Some men use more carbide than others, but I would say an average would be about every other day, every two days or three days.

Q. In getting that carbide, where does he get it?

A. At the entrance at the beginning of the shift.

Q. Except that time at Muscoda you mentioned when they got it at the wash house?

A. Yes, sir.

Q. What appreciable time does it take a man to get a can of carbide?

A. About a minute and a half.

Q. What does he do?

A. Gives in his empty can and receives a full can for his empty can.

Q. That is the extent of it, all of it?

A. Yes, sir.

Q. That is done before he goes underground?

A. Yes, sir.

Q. It is compulsory on the men to get the carbide from the company or can they get it anywhere they please?

A. It is not compulsory, but as the carbide is furnished at cost by the company to the men, they do practically 100 percent get it from the company.

Q. The company sells it at cost and makes no charge for the service?

A. That is right.

Q. Those practices there have been in effect how long, would you say?

A. Oh, ever since we put in the carbide lights, which dates back to 1904 or '05, somewhere along in there.

Q. Is there any schedule of time as to when the men come to the bath house or leave the bath house, or is that left up to the individual man to do as he pleases?

Mr. Brodie:

As of what date?

Mr. Burr:

All the dates are back of May. I thought I made that clear to everybody. All the questions I ask relate back behind May 1, 1941.

The Court:

When the act went into effect?

Mr. Burr:

Yes, sir.

Mr. Smith:

You mean the time of compliance with this act, not when the act went into effect?

Mr. Burr:

That is right, the time of compliance, and I am going back of there about twenty years.

Q. When did you start using carbide?

A. I think it was back about 1904 or '05. Prior to that time they used the old oil lights.

Q. Has this custom been in force since then?

A. It has.

Q. Since the change?

A. Yes, sir.

Q. When did you commence building bath houses?

A. Oh, we were building bath houses back in 1905 or '06 or '07, and I think we built the two at Ishkooda about 1909.

Q. It has been ever since 1909 as a limit?

A. Yes, sir.

Q. From that time on down to May 1, 1941?

A. Well, we recently build a bath house at Number 9 mine.

Q. I know you have built new houses, but the system and practice has been in force?

A. Oh, yes.

Q. I know you have built new houses, but the practice and custom you have told about has been in force since that time?

A. Yes, sir.

The Court:

Since 1900?

Mr. Burr:

Since 1909.

Q. I don't know whether I asked you this question; I don't know whether you answered it or not. Since 1909—back from 1909 was there any schedule as to which the men were to be at the bath house, or was that left to them?

A. It was left to them except they were required to be there to catch one of the regular skips.

Q. What they did prior to that was according to their own judgment and wishes?

Mr. Brodie:

May it please the Court, we have a witness on the stand. I don't think counsel should lead the witness.

Mr. Burr:

I will try not to lead him any more than I can help. I don't think it is necessary to lead him at all It is to save time.

Mr. Brodie:

If it is not necessary, then why do it?

Mr. Burr:

These objections like that of these gentlemen just take up time.

Will you read the question?

(Thereupon the reporter read the question last propounded as above recorded.)

A. Prior to the time they entered the portal of the mine.

Mr. Brodie:

Your Honor, my objection to that question was sustained.

The Court:
He answered it on his own volition.

Mr. Brodie:
I didn't hear it.

The Court:
Is that the way you understood it, Mr. Harris?

Mr. Harris:
I thought the question was objected to as leading and then he completed the question by whether or not.

The Court:
Go ahead.

Q. State whether or not there was any checking-in or checking-out at the bath house, any delay when they came or left; was there anything of that kind?

A. There was not.

Q. Is the practice you have stated about the men getting the carbide—has that practice been substantially the same all the time or not—

A. It has.

Q. —since you started the use of the carbide lights at the time you mentioned?

A. It has.

Q. After the man gets his carbide the next thing is the appearance at what you call the tipple?

A. At the tally house.

Q. At the tally house?

A. Yes, sir.

Q. What is the method or what was the method of transportation from the tally house down into the mine on the mine slope; what was that method of transportation?

A. The men were—

Mr. Brodie:

Just a minute. May I ask a date be specified for that? There have been a number of methods with regard to that. This witness has already testified at one time they walked.

The Court:

You might specify.

Mr. Burr:

Why, if Your Honor please, I have stated immediately prior to May 1st, and then I expect to go back and show how long that has existed. If he wants to go further, he can do it.

The Court:

Well, specify.

Mr. Burr:

Yes, sir. I don't see the reason for these technical objections.

The Court:

Go ahead.

Mr. Burr:

Will you read the question?

(Thereupon the reporter read the question last propounded as above recorded.)

A. The men were lowered in the mine, being ridden in the regular ore skips; approximately 38 to 40 men in the skips were lowered at one time.

Q. What is this ore skip, Mr. Ball?

A. It is a box, you might say, with four wheels on it which ran on a five-foot gauge track.

Q. Does it go downhill on a track?

A. Goes down the slope fastened to a hoist rope, and the other end being fastened to a hoisting engine.

Q. Is that skip made for the men to ride in on or is it used for other purposes, and if so, for what other purposes?

A. It is used for hauling the men, and after the men are in the mine it is used for hauling ore out of the mine.

Q. Is it used for taking material in the mine?

A. It is. What we call a larry or trailer is fastened to the skip, and it is used for lowering materials.

Q. That slope which the skip goes up and down, is that the only entrance and exit from the mine?

A. It is for that one mine, except the mines are connected by stopes. You can go from one mine to the other.

Q. As far as getting down from the surface is concerned—

A. You have to use the slope for that mine.

Q. For that mine?

A. Yes, sir.

Q. Now, when the miner first—tell me this: Prior to the time I have asked you about, was there a regular schedule upon which those mantrips operated —

A. There was.

Q. —leaving the entrance?

A. There was.

Q. You had two shifts, I believe you said, before dinner?

A. Yes, sir.

Q. So the schedule on one of those shifts would be the same except—

A. 6 A. M. and 6 P. M.

Q. Suppose you give the Court, if you will, what the time of the going down of the first skip in the morning was, the average time?

A. The average time for the eight ore mine was 6:07

Q. Now, I understand by that that the first skip started down on an average time at all the ore mines, from these studies you have made, at 6:07 in the morning,—A. M.?

A. P. M. and A. M.

Q. How many skips were operated that morning; how many trips were made to carry the men in the mine?

A. Anywhere from three to six, depending on the mine.

Q. Some mines had more employees than others?

A. Some had three and some had six.

Q. You say the first skip went at 6:07. At what time did the second one go down?

A. As a rule it took about five or six minutes to lower the men, and then you would have to pull that skip out, which would probably take another three or four minutes, so that would be five—about every eight or nine minutes, we will say. Of course, in lowering men you cannot lower as fast as you can hoist an empty skip. We are limited on the speed at which we lower men, approximately 1,000 to 1200 feet a minute, while hoisting a skip you can hoist that skip at 3000 feet a minute.

Q. In that way are the men hauled down—do they get off at one station or get off at different levels?

A. They get off at one station known as the underground loading station.

Q. The distance from the surface to that underground manloading station, is that the same in all the mines, or different in different mines?

A. There are some differences in the different mines, but approximately 6000 feet.

Q. Was there any difference—were the men scheduled to go down in any particular skip?

A. They weren't scheduled. Over a period of years they scheduled themselves. All we require was that there be enough men there to fill a skip when we lowered it.

Q. Now, what time—before I ask you that, I will go back again. When the men get on the skip is there anything they have that is deposited before they go down into the mine?

A. They deposit what is known as their brass check at the tally house, and that is hung on a board which designates their working place. That is done so if there is a shortage in that crew the mine foreman will know it and can take men from the service crews and put on the producing crews.

Q. What time, appreciably, is taken up in a man handing in his check?

A. Just a fraction of a second, I will say.

Q. Is that check board a large board that hangs there in the tally house?

A. Yes, a board probably—according to the size of the mine it varies a little, but the average board is probably three times as wide as this board here, and not quite as long.

Q. Are there hooks—

A. Yes, sir, there are hooks, and we mark the working places on it.

Q. That brass check hung on that board would indicate the working place of the man?

A. Yes, sir, that is correct; whether he was on the production crews or service crews.

Q. And the man there would take that check—

A. And put it on the proper hook.

Q. —so the mine foreman could look and tell who was in the mine and who was not in the mine?

A. Yes, sir.

Q. Is that a safety measure also?

A. Yes, sir. It is the only way you can be absolutely certain a man is not left in the mine.

Q. But if a hook is vacant in a production crew, you have to make arrangements for another man?

A. Yes, sir, you have to put a man in his place.

Q. You take a man from the service crew and put him in that production crew?

A. Yes, sir.

Q. That is the only check-in at all?

A. That is correct.

Q. When the men come out of the mine at the end of the shift, what do they do with reference to these checks?

A. They go to the tally house and the check man hands each man his check, which indicates he is out of the mine.

Q. And he keeps that check until he redeposits it the next morning when he goes in?

A. Yes, sir.

Q. How long prior to May 1, 1941, was that practice and custom in effect there on the mountain?

A. Checking the men by brass checks was in effect back as far as I can remember,—back in 1902.

Q. That is far enough. Back as far as 1902 that same thing has been done?

A. Yes, sir.

Q. All right, sir. I want to get the schedule of those trips a little bit more definitely. Later on we will probably get the studies made of that, but now the—what time immediately prior to May 1, 1941,—and then I will show how long that custom and practice existed. At what time were the day turn operations begun in the mines, the day shift?

A. You mean after they get inside the mine?

Q. That is right. When the pay started, the computation of their pay.

A. The pay started when they got to their working places and began to work.

Q. What time were they supposed to be at their working places and begin to work?

A. At 6:45 A. M. and P. M.

Q. Was there any time during that period of time given for lunch?

A. They all had thirty minutes for lunch. In some of the different mines it may have varied,—oh, half an hour generally,—put it this way: some of the mines took their lunch hour, say, at 10:30, and others at 11:00. The

men get up real early, and different mines had their lunch time at different times to suit the men.

Q. Was any signal given which indicated when the workday began in the mine under this custom?

A. The lights in the mine were what we call blinked. That was done by the motor generator set which furnished the current for the light and the mechanical loaders.

Q. That was for the beginning of work?

A. That was at lunch time.

Q. At the beginning of work time was any signal given?

A. No. They just depended on their being there at 6:45. They would blink the lights for shooting time at the end of the shift.

Q. The shift began at 6:45?

A. Yes, sir.

Q. A. M. and P. M.?

A. Yes, sir.

Q. And then half an hour for lunch?

A. Yes, sir.

Q. And the shooting time was when?

A. The standard shooting time was 3:10.

Q. According to the practice and custom, did or did not the men or any of them leave their working places before the shooting started?

A. Yes, sir. As a rule, the section helpers, the drag operator, the men helping on the drills left much earlier than the head miner and the drill runner, who stayed to load and blast the drill holes.

Q. About how long before 3:15 would you say they left?

A. Oh, I would say anywhere around 2:45 to 3:00 o'clock.

Q. And when they left, where did they go?

A. They took their time and walked up to the manloading station ready to take the first skip that was going out at the end of the turn.

Q. What time did that first skip go out taking the men out of mine?

A. The average for the eight ore mines was at 3:14.

The Court:

What time?

Mr. Burr:

3:14.

Q. That is the average?

A. Yes, sir, from our time studies.

Q. Of course, it varied in the different mines?

A. Yes, sir.

Q. Now, during that period of time,—this same schedule of cars and computation of work time,—how long prior to May 1, 1941, had that practice and custom been in universal effect down there?

A. Will you please state that question again, Mr. Burr?

Q. How long had that same method and schedule of operations of taking the men into the mine and bringing them out and leaving the working places at shooting time, how long—

A. Oh, it had been in effect ever since we started to hauling men in and out of the mines. Of course, at one time they were on a ten-hour basis, and that would make the time at which you pulled the men out a little later than on the 8-hour basis.

Q. How long prior to May 1, 1941, was the mine on the 8-hour basis? About when did the—

A. I believe October 19—somewhere in there,—1933.

Q. 1933?

A. Yes, sir.

Q. Previous to that time it had varied—

A. They had been on a ten-hour basis face to face.

Q. And previous to that time what sort of basis had they been on?

A. There was a time during the last World War where they were on an 8-hour basis for a short time, and then they were on a 9-hour basis for a short time. I wasn't here, and I am not familiar with just what dates those were.

Q. You were not here? You were in the World War?

A. I was in the World War,—the A. E. F.

Q. I believe you said the 8-hour day had been in effect from when, now?

A. The last time from October, 1933.

Q. So, from October, 1933, until May 1, 1941, the 8-hour day was in operation, computing from the time the man got to his working place until he left his working place; is that correct?

A. That is true; from 6:45 to 3:15, excluding the time out for lunch.

Q. On—prior to May 1, 1941, Mr. Ball, who kept the time, the daily time sheets of the mining and underground employees?

A. Each head miner made an abstract sheet giving the name and check number and the hours worked for each man in his crew, and the same thing applied to the service crews, the head timbermen, head track man, or head chute builder would make out an abstract for the men on his crew. For the other maintenance men, such as motormen, mine mechanics, motor inspectors, pipe men and so forth there was a sheet made out by the assistant mine foreman who kept their time.

Q. Did those respective people who kept the time of these underground workers,—did they visit the place of work and get the time? Is that how it was done?

A. Each foreman stayed with his crew and knew where his men were.

Mr. Burr:

Will you mark this T. C. I. Exhibit X, and X-1 to X-5?

(Thereupon the said documents were marked T. C. I. Exhibit X, and X-1 to X-5, both inclusive.)

Mr. Harris:

May I see those before you offer them?

Mr. Burr:

Yes, sir.

Mr. Harris:

We have no objection. Will you make clear as to the time?

Q. Yes, I will. Mr. Ball, I will ask you, please, sir, to look at these exhibits as I will identify them to you, and answer the questions in reference to them. Exhibit marked T. C. I. Exhibit X appears to be headed daily time sheet, mine, underground. Was that the form used prior to May 1, 1941?

A. It was.

Q. By the headminers?

A. Yes, sir.

Q. In reference to the productive miners?

A. Yes, sir.

Q. They filled in the badge number over to the left?

A. He did.

Q. And the name in the names-column?

A. He did.

Q. His own name would be the head miner?

A. Yes, sir.

Q. And then the crew consisted of drag operator, drill runner and section helpers?

A. Yes, sir.

Q. And then he would put here the hours worked that day?

A. Yes, sir.

Q. Would those hours worked include any part of the traveling time, or did they include only the time he worked at his working place?

A. Only the time he worked at his working place. It was always shown at eight hours.

The Court:
Shown at what?

The Witness:
Shown at eight hours.

The Court:
Shown at eight hours?

Mr. Burr:
Yes, sir.

Q. Would that always be shown at eight hours irrespective of whether the man left his working place thirty minutes before the eight hours?

A. Yes, sir.

Q. Down here would be information about the powder used?

A. Yes, sir, and fuse and caps.

Q. Did he sign that?

A. Yes, sir.

Q. And turn it in each day?

A. Yes, sir.

Q. To whom?

A. To the mine foreman who would check it and approve it.

Q. What did he do with it?

A. The mine foreman turned it over to the superintendent, who checked it.

Q. Then where did it go?

A. After the superintendent looked it over and made any allowances for loading rock or slate, it was turned over to the time clerk and it was put on the payroll.

Q. And the man paid by it?

A. Yes.

Q. Yes. The next sheet, T. C. I. Exhibit X-1 seems to be "Daily Time Sheet, Mechanical, Electrical and General Underground Employees."

A. Yes, sir.

Q. And includes the different occupations listed on the sheet?

A. Yes, sir.

Q. Such as haulage engineer, sinking hoist engineer?

A. Yes, sir.

Q. And so on?

A. Yes, sir.

Q. And on that appears the badge number, the name, occupation and the hours worked?

A. Yes, sir.

Q. Who is that sheet kept by?

A. The assistant mine foreman.

Q. And what does he do with it?

A. He turns it over to the mine foreman, who approves it and turns it into the office.

Q. Then what is done with it?

A. The superintendent checks it over and approves it and it is passed on to the time clerk and put on the payroll.

Q. And the men are paid by the time shown on that sheet?

A. Yes, sir.

Q. The next one is T. C. I. Exhibit X-2, and appears to be, "Daily Time Sheet, Timbering, Tracks, Chutes, Material and Slate Dump, Underground."

A. It is the one the timber man or track man will sign as foreman, and he would put his men down in the same way.

Q. In the same way as the head miner?

A. Yes, sir.

Q. And the next one, T. C. I. Exhibit X-3, is the same for the ore inspector, dispatcher, motorman, trip rider and such men as that?

A. Yes, sir.

Q. That would be handled in the same way?

A. Yes, sir.

Q. The next one I am asking you about is T. C. I. Exhibit X-4. That seems—

The Court:

X-4?

Mr. Burr:

Yes, sir, X-4.

Q. —to be an authorization for overtime. What was that form used for?

A. When any production crew or any service crew had to work over the regular hours and did not come out on the regular shift, this sheet was made, stating the reason for it, whether a breakdown or whatever it was.

Q. That was in excess of eight hours?

A. Yes, sir.

Q. That was handled in the same way and would go to the payroll clerk, and the men would get payment for overtime in the same way as the others?

A. Yes, sir.

Q. This next one, T. C. I. Exhibit X-5, is what?

A. A form where men left the mine before the shift was over, and also shows the number of railroad cars loaded and the number of railroad cars sent to the furnaces.

Q. Sometimes a man would have to leave the mines on account of sickness?

A. On account of sickness, or especially injuries.

Q. And then this sheet would be used?
A. Yes, sir.

The Court:
What exhibit is that?

Mr. Burr:
This is Exhibit X-5.

Q. Now, for about how many years previous to May 1, 1941, was that practice and system in force, and those forms substantially of that kind in use?

A. Those forms were—we put in the practice and use of those forms on August 19, 1936.

Q. Was that the date when what is known as the incentive plan went into operation with the Tennessee Company?

A. Yes, sir.

Q. Previous to that time, so the Court can have an idea of what was done,—previous to that time how was the time kept underground on which the men's pay was computed?

A. There was an underground timekeeper who was stationed at the underground man-loading station. As the men came by there he took their name and check number, and he knew at which working place they were going to work that day. After the day's shift was done they came by the same place and he checked them on his book.

Q. That practice existed for how many years previously? About how many years, as near as you can get at it?

A. Oh, for, I think, as far back as probably 1910 when they first put underground timekeepers in the mines.

Q. The underground timekeepers, when they were there, did they go around to the different working places and take the time; is that the way it was done?

A. They did until about the year 1925 or 1926, when I stopped that practice because I didn't think—

Mr. Brodie:

We object.

Q. Never mind what you stopped it for. You stopped it?

A. Yes, sir.

Q. When?

A. About '25 or '26.

Q. And then you—

A. Then we had the man stationed at the underground loading station.

Q. He stayed at the underground loading station and each man reported to him there when he came in and when he left; is that the way it was done?

A. Yes, sir.

Q. One thing I want to get clear before I get on to something different. You referred to this as working place—

A. I would like to add to my statement there sometime prior to May 1, 1941, the underground timekeeper—it was during the depression,—was taken outside the mine and stationed at the outside tally house.

Q. During the depression?

A. Yes, sir, 1933 or '34.

Q. You refer to this as the working place.

A. That is the working face.

Q. The whole thing is the—.

A. Is the working place.

Q. When, prior to May 1, 1941, in reference to underground—the productive—the production crews, did their time, the 8 hours, start when they got to the face or working place?

A. When they got into the working place. There was a tool box at each place, and when they got to the tool box to get their skidder blocks and jackhammers and wedges and things of that kind, it was considered their time started.

Q. They ran on then until the afternoon—

A. At shooting time.

Q. At shooting time?

A. Their time was computed until 3:15.

Q. Until 3:15?

A. Yes, sir.

Q. Under that system the men were actually at their working place, or supposed to be at their working place eight hours, and there was no computation of or payment made for traveling time?

A. None whatever.

Q. Where was the working place of the service crews; where was that?

A. The working place of the service crew was generally near the vicinity of the underground manloading station, because they had their tool boxes and tool house and got their supplies right there, and from that point they went to the different working places to fix tracks or put in timber.

Q. Wherever they were sent?

A. Wherever it was necessary.

Q. But the time began to be computed at the tool box near the underground loading station?

A. Near the underground loading station.

Q. They didn't wait until they got off down the track somewhere?

A. No, sir.

Q. But it was near the underground loading station?

A. Yes, sir.

Mr. Burr:

Will Your Honor let me mark some exhibits here?

The Court:

Yes, sir.

Mr. Burr:

Mark these Exhibit Y, Y-1, Y-2, and so on; and mark these Exhibit V, V-1, V-2 and so on.

(Thereupon signed pay receipt stubs of I. V. Robinson were marked T. C. I. Exhibits Y and Y-1 to Y-22, both inclusive, and pay statements of I. V. Robinson with unsigned receipt stubs attached were marked T. C. I. Exhibits Y-23 through Y-46, both inclusive; and signed pay receipt stubs of Fred H. Trammell were marked T. C. I. Exhibits V, V-1 to V-22, both inculsive, and pay statement forms with unsigned stub receipt forms attached were marked T. C. I. Exhibits V-23 to V-48, both inclusive.)

Mr. Burr:

Off the record.

(Here followed an off the record statement.)

Mr. Harris:

Something that has been revolving through my mind—

The Court:

Is this for the record?

Mr. Harris:

Yes, sir, I want it on the record.

—with respect to this situation, anything before the Fair Labor Standards Act went into effect, how the men were paid and how they kept records would not be material.

Your Honor will recall it has been our argument heretofore that no contract or custom or anything else could operate here as a waiver or estoppel as to the Fair Labor Standards Act as promulgated by the President and Congress of the United States.

Now, just how they paid the men and how they kept records prior to 1938,—if Your Honor is going to let that go in, that will, of course, open a very wide range of evidence, and even if you let it go in, we by no means concede that any of that evidence would be material on the question of these individual claimants.

It is our position that all custom, all precedent and agreements and everything else was abrogated when the supreme power of the United States announced the law, and therefore how a man went down in the mine, and the time he went,—how his time was kept, and how they kept those specimens, is immaterial. If they go back of October 24, 1938, when the Fair Labor Standards Act went into effect, it is my contention that none of those things can operate to deprive a man of money for time spent in the service of his employer.

Whether Your Honor wants to get the historical background and then make up your mind, or—

The Court:

I think I ought to rule on it now.

Mr. Burr:

If Your Honor please, this evidence is not offered at this time on any question of waiver against any individual employee. That is not a matter we have here for consideration. We have one question for consideration, and that question we have for consideration is this: It is what the intent of the Congress was at the time it enacted this act in using the word "Workweek".

Now, instead of it not being admissible prior to 1938, that is the time, it seems to me, that it is most admissible on that question. The authorities hold if there is no ambiguity about the language of the statute,—in other words, if Your Honor can say now what the word "workweek" means, that decides the question, but if there is any un-

certainty or ambiguity in it, the Court will consider all customs that existed at and prior to the time of the passage of the Act on the theory the Congress itself should have and did consider those facts.

Here is what we are offering these receipts for: We are offering these receipts to prove,—it doesn't open up any question along the line he suggested, on the question of waiver,—we propose to prove here that not only casually, but it was maintained for years before this Act was passed, the custom and practice in these mines was for the employer and the employee to agree that the work-week and workday didn't include transportation time. Here are the receipts over the man's own signature to that effect, because every one of these statements, every one of these receipts show traveling time was not included in the computation.

There can't be any doubt about that being admissible evidence.

The Court:

I don't know that that is disputed.

Mr. Burr:

That is all I am asking. I am not trying to get any waiver now. I haven't gotten that far. Later on I may raise it.

The Court:

Colonel Harris, I don't ask you to make any stipulation, but the matter addresses itself to my mind whether or not it could be admitted that was the custom, that they did that in the past up to 1938 as well as up to May 1, 1941.

Mr. Harris:

As to the—whether or not it was the custom to consider first comes to my mind,—whether the custom is one voluntarily consented to on the part of the people against whom the custom is invoked comes to my mind. In other words, was that custom one in which they had no choice? Did they have anything to do with the creation of the custom?

Second, would that custom be legally admissible at all once Congress has passed a law for the purpose of wiping out all customs and creating one system on a clearcut, simple basis for determining how men in industry in the United States should work, and how they should be paid?

The Court:

The trouble of it is Congress didn't do that. That is why we are here in this lawsuit.

Mr. Burr:

The Court—

Mr. Harris:

Well, the fact we have a lawsuit—

The Court:

When Congress hasn't defined, as I think they should have, what does constitute a workday—

Mr. Burr:

That is right.

Mr. Harris:

Of course, it would have prevented litigation if Congress had appended a bibliography or history to the different industries,—if they had classified all the industries in the United States and analyzed them and gave us an alphabetical index and said certain work starts at a certain place and ends at a certain place, it would have saved a great

deal of trouble, but we couldn't possibly have legislation of that type.

The Court:

But the argument of Mr. Burr is that this Court ought to have before it what happened in the past.

Mr. Harris:

How do we know Mr. Burr or any representative of the Tennessee Coal, Iron & Railroad Company ever communicated to Congress any information Mr. Burr is asking Mr. Ball to communicate to the Court?

Mr. Burr:

I will make you a sporting proposition, Crampton. Congress is supposed to know the custom, but we had Senators and Representatives who were engaged in mining—

The Court:

Not from Alabama.

Mr. Burr:

Yes, we had one. John Bankhead made all the money—he ever made in his life from it.

The Court:

Not ore mining.

Mr. Burr:

No, in coal mining, but there is no difference.

Mr. Harris:

If the Congress of the United States is omniscient then obviously Congress had before it the gold mining situation in the West, the copper mining that was at Heckla, and out in Wyoming, and it had the gypsum mining operations, and so, if he can go ahead and show the custom in this par-

ticular mine these gentlemen represent, the Wage and Hour Board, by the same token can come in here and show Your Honor every custom that existed in every kindred mine in the United States,—every ore mine in the United States. You can't say we will show the custom of this little company,—and it is little compared to some of the others,—and that Congress was thinking of it and wasn't thinking of the national picture. If we are going into that custom, too, as I say, it opens up—

The Court:

I don't think we will go into it. I will sustain the objection if it is objected to. Is it objected to?

Mr. Harris:

Yes, sir; I object to all that happened before 1938.

The Court:

Before the Act was enacted?

Mr. Harris:

Before the Act was enacted?

Mr. Harris:

Yes, sir.

Mr. Burr:

Your Honor, of course, will give me an opportunity to be heard on that later, because I want to cite the authorities on it, or if you can hear me now—

Mr. Smith:

What is the date of that one you introduced?

Mr. Burr:

I propose to show not only that everyone of these 6000 employees assented, but that they, from the time they en-

tered the employment until the time of the enactment of this Act, and from the time of the enactment of this Act up until May 1, 1941, every one of them, knowingly under contract and under solemn agreement, walked up and accepted payment for their wages with the traveling time excluded.

Mr. Smith:
Couldn't get them without doing that.

Mr. Burr:
The authorities hold without any question if there is any ambiguity in the Act,—I don't think there is any because I think if you travel into the Western territory like he is wanting to travel, if Congress had wanted to do what they are contending for in this case, it would have done like Utah and Arizona,—it would have inserted in the Act the workday should include the time spent in going to and from the portal, but Your Honor has to let the evidence in on this proposition in order to see the whole viewpoint when you get ready to make up your mind, but if there is any ambiguity, then unquestionably the conditions and customs and practices that existed at the time the Congress passed the Act are very material and are the most substantial evidence we can have.

The Court:
I will let it in for the moment.

Mr. Harris:
We except.

The Court:
We will have a short recess.

(Thereupon proceedings were in recess from 2:30 P. M. to 2:40 P. M., at which times proceedings were resumed as follows:)

The Court:
All right, proceed.

Mr. Harris:
I had an order I wanted to take up during the recess.

Mr. Burr:
I can't do it and examine a witness.

The Court:
Do it now.

Mr. Burr:
Suppose I finish this little matter and then take it up.

Mr. Harris:
All right.

The Court:
All right.

(By Mr. Burr):

Q. Mr. Ball, do you recall when the company began paying once a week? I believe they are paying once a week?

A. Well, four times a month.

Q. Four times a month; that is what I mean. Do you remember about the time that happened?

A. When the commissary check system was abolished.

Q. To refresh your recollection,—I know the date,—wasn't it on January 1, 1939?

A. I believe that is right.

Q. Previous to that time they had been paying twice a month?

A. Twice a month.

Q. I will ask you, please, sir, to examine these exhibits here, Y, and I will ask you if Y through Y-22, all of which

bear the signature of I. V. Robinson are the stubs signed by the employee covering his earnings?

A. That is right.

Mr. Harris:

Will you permit us to reserve an exception to all going back of the date of the Fair Labor Standards Act?

The Court:

I will overrule the objection and give you an exception.

Q. Those that have the stubs and statements attached, are they copies of the statement?

A. Yes, sir.

The Court:

If you say "these" you had better tell what they are.

Mr. Burr:

I asked him about Y through 22. They are the stubs and receipts signed by the men.

The Witness:

That is right.

Q. And Y-23 through -46 are carbon copies?

A. Of the original statement.

Q. And the stubs?

A. And the stubs.

Q. I will ask you if the original statements of these from Y through Y-22,—the originals would be with Mr. Robinson?

A. He was supposed to keep that for his own information.

Q. Given to him anyhow for that purpose?

A. Yes, sir.

Q. Is that also true with reference to the exhibits with reference to Mr. Fred H. Trammel, which are marked T. C. I. Exhibit V?

A. Yes, sir.

Q. Is that also true of all the employees at the ore mines during this time?

Mr. Harris:

We object on all the grounds we have heretofore stated.

The Court:

Overruled.

Mr. Harris:

Except.

Mr. Burr:

Of course, later on, if any insistence is made, I will get the statements for every one.

A. Yes, sir.

Mr. Burr:

All right; we can take up the question about which Mr. Harris spoke.

Mr. Harris:

I haven't had an opportunity to discuss this with Mr. Burr, but since this morning I have discussed it with my associates.

It is a very simple matter and a very practical matter, and to leave no question of the inspection, it was suggested, —I mentioned it to Mr. Burr and incorporated it in the order,—that the companies send these two engineers down, that is, take them down, and the companies have their engineers along with them.

Now, we have two groups of defendants, the A. F. of L. and C. I. O. groups. Each one of these has men working in the mines, so if an A. F. of L. miner and a C. I. O. miner accompany them when they come into that mine and start on their inspection, then the parties will know whether or not the samples that are taken for the benefit of this Court,—that is, did they go to the proper places, or did they go to limited places, and it couldn't possibly hurt anything to take two trained miners, one of the A. F. of L. and one of the C. I. O.,—they are parties to this case,—it couldn't possibly hurt anything, and in preparing the order, feeling that was the just and fair thing, I put it in there.

Another thing, we think it is fair that these men should go down on a regular skip. Mr. Ball has testified about a skip, about how many men are hauled on it, 38 to 40, and how long it have been going on. We think these men would be in better position to testify if they could see the whole operation. Your Honor is interested in everything that goes on.

The Court:

Of course I am.

Mr. Harris:

It isn't such a dangerous thing that the men are going to get killed and the company is going to have damage suits, because the men got killed down there serving this Court.

The Court:

How many are you asking for?

Mr. Harris:

Just two men, a miner connected with each group group of defendants. We ask they be allowed to go along.

The Court:
With whom?

Mr. Harris:
Those two experts and the company men.

The Court:
The engineer and chemist, or whatever he is?

Mr. Harris:
The economist, I believe. Of course, the company will want to take them so they will know how they are going and where they are going.

The Court:
I think that will be all right.

Wouldn't it be better, Mr. Burr, if they go down in the regular course of business?

Mr. Burr:
I will have to discuss this with the management.

The Court:
I would prefer that to be done if it could.

Mr. Burr:
Yes, sir, but I know what has happened before, and I don't see any reason why there should be put on those skips five or six men,—if they want to know anything about those skips—

Mr. Harris:
We—

Mr. Burr:
Just a minute.—they have individuals that ride them twice a day. Why the engineer and economist should ride these skips is more than—

The Court:
Your Engineer will be along too.

Mr. Burr:
They will be on a special trip to be made.

The Court:
They are going with these gentlemen?

Mr. Burr:
Yes, but these two engineers and our engineer will go on a special trip. We don't want those five or six people crowding our regular workmen out.

Mr. Harris:
We would like for them to get a chance to start today, if the Court please.

Mr. Burr:
I don't see how that is possible. They have had since July 1st to make this request. Now, they want to come up here and get it at an hour's notice.

The Court:
We will be reasonable.

Mr. Burr:
I think the whole matter could be obviated. Why bring in these people from I don't know where to testify about conditions they see there? If the Court wants to view the premises, that is different.

The Court:
The Court has passed on this.

Mr. Burr:
Yes, but I am not going to disrupt our whole organization; unless the Court tells me to, I am not going to do it.

The Court:
I am not going to disrupt your whole organization.

Mr. Burr:
Let us have an opportunity to consult.

The Court:
Very well. We will take a recess.

(Thereupon proceedings were in recess from 2:55 P. M. to 3:05 P. M., when proceedings were resumed as follows:)

Mr. Burr:
Judge, we want to do everything we can to cooperate in getting this inspection made since Your Honor thinks it ought to be made,—

The Court:
Yes.

Mr. Burr:
But I have talked to the operators of both companies,—we haven't the Republic operators here at all because I felt the Tennessee Company would be here quite a while and I didn't want to bring in the key men from the Republic Company.

The Tennessee Company has thirteen mines and Sloss two and Republic two—that is seventeen mines—

The Witness:
We have nine.

Mr. Burr:
Yes, I had it wrong. It is a total of thirteen mines.

These men tell me they are not willing for any outside men or their own employees to go on the regular mantrip. They tell me it will interfere with the schedule. They want the men to get to their work, and there might be some danger. What they are willing to do is to arrange a special mantrip—

The Court:
A special mantrip?

Mr. Burr:
Yes, sir.

The Court:
Can you do it about the time of the change of shifts?

Mr. Burr:
Yes, sir, as near as we can. We will arrange it for 6:30 at the Tennessee Company's mine.

The Court:
Your regular men start at 6:15?

The Witness:
About 6:02.

Mr. Burr:
In other words, taking the special trip down at 6:30, they will have had time to get all their men to their working places and have gotten material delivered and gotten in shape not to interfere with the operations. The Tennessee Company, like these other mines, are operating under a five day week, you know. That is under the contract.

The Court:
Yes.

Mr. Burr:

Some mines operate some days and some another. Number 4 mine is on operation at 6:30. We will be ready to have the special mantrip go down in Number 4 at 6:30—

The Court:

In the morning?

Mr. Burr:

No, we can't do it by in the morning.

The Court:

I mean 6:30 in the morning?

Mr. Burr:

Yes; we can do it by Thursday. Then the next day at some mine that happens to be in operation. You see what I mean. We don't know now what mines will be in operation, but we will pick out one of the Tennessee Company mines that is in operation.

The Court:

Let me ask this: Can't they go down and back in an hour and a half or two hours and make the inspection?

Mr. Harris:

No, sir.

Mr. Burr:

They say they want to go longer?

The Court:

I don't know.

Mr. Burr:

I don't know either. We want to get them in there and get them out and get through with them. If they want a day we are going to give them a day.

The Sloss people say their operations—Mr. All will explain that,—they can take them at 8:00 o'clock at the Sloss Mine and 8:00 o'clock at the Ruffner Mine.

The Republic Mines, I am having Mr. Patterson phone out to see when they can take them in. They have two mines, Raimund and Spaulding.

We want Your Honor to have this done, to have every man that goes in the mines sign an individual release.

The Court:

I will require that.

Mr. Burr:

Next, we want to know who the men are that are going in the mine.

The Court:

I think you are entitled to know who they are.

Mr. Burr:

Then we object to putting this in the order. They say they be permitted to take photographs,—that is all right,—make dust counts. What that is I don't understand, and I don't know what it has to do with this case. I have been wondering if they are proceeding on the theory they can show our ventilation is bad and the men ought not to work in the mines over eight hours, but they can't take that position because, as stated by the counsel today, they don't care how long we work them just so we pay them for the extra time.

What has silicosis to do with it?

We wouldn't be willing for that to be in the order.

And then this: "And engage in such other investigations as they deem necessary."

We would object to that.

The Court:

If they want to make investigation of the dust in the mines, I don't see why that shouldn't be done, but as to that, that is too general.

Mr. Burr:

I had one case with reference to these departments coming investigating and the information they got turned up in another department. I don't say that is going to happen here, but I have learned a few things.

Those are our suggestions. That is the best we can do.

I might say this in conclusion; while we are not raising that point, this is not like going into an ordinary plant or inspecting papers. We might say to these gentlemen, just come down, but if we are called upon to furnish transportation we have got to do it at a time when we can do it without interfering with our operations.

Mr. Harris:

The words "such other investigations" are too broad.

The Court:

I think that is too general.

Mr. Harris:

Now, I didn't keep up with his schedule. He was talking too fast for me to remember it all.

The Court:

You can get that—

Mr. Harris:

As I got it, as to the company you haven't got here, you can't deal with them at all.

Mr. Burr:

We have them all here except the Republic.

Mr. Harris:
You can't deal with them?

Mr. Burr:
No.

Mr. Harris:
You have the Sloss and T. C. I.?

Mr. Burr:
Yes.

Mr. Harris:
As I understand, the earliest time you can take them as to the Sloss and T. C. I. would be when?

Mr. Burr:
Thursday morning.

Mr. Harris:
That is day after tomorrow.

The Court:
You mean you can't go before then?

Mr. Burr:
No, sir.

The Court:
What is the reason for that?

Mr. Burr:
They tell me they can't do it.

Mr. Harris:
That is something I can't understand.

Mr. Burr:
Mr. Ball can tell you why.

Mr. Harris:
I have read everything I can get my hands on, pamphlets and magazines and everything else. If two or three or five or six hundred men are going down in these mines every day why can't these men go in?

Mr. Burr:
I have got to get Mr. Maxwell and Mr. McKenzie, our engineers—

Mr. All:
We will try to work Sloss tomorrow. Tomorrow is going to be a lost day, but we are willing to lose it and go ahead.

The Court:
You are not working tomorrow?

Mr. All:
No; I say if it is going to be a lost day, we will work out arrangements for them to go to Sloss in the morning.

The Court:
They have two places?

Mr. All:
Ruffner and Sloss.

The Court:
Which one can they go to in the morning?

Mr. All:
Either one they want.

The Court:
Can they do two in one day?

Mr. Harris:
If they can do it in one day—

Mr. Burr:
I want to put a limit on it. I want to know when it stops. I should think the engineers could vary the schedule as they see fit. If they can do two mines in one day, that is fine.

Mr. Harris:
As I understand, instead of these men going on the skip with the men, they go on a special skip right after the men go down?

Mr. Burr:
That is the way ours will go.

Mr. Harris:
We wouldn't want to be allowed to go in two hours later. We would want to go in as close after the—

The Court:
That is the agreement with the Tennessee Company.

Mr. All:
If we could work it this way, to go to one of the Sloss Company's mines at 7:30, and if they can get out around one o'clock they can go to the other mine the same day.

Mr. Harris:
We will have them there at 7:30. Which one?

Mr. All:
Sloss Red Ore Mine.

Mr Harris:
We will have the two men there.

Mr. Burr:
Who are they?

Mr. Brodie:
One is George Wheeler, and the other J. S. Rogers.

The Court:
Who are they?

Mr. Brodie:
Both of them are employed by the Department of Labor. Mr. Wheeler is the economist. He is right here. Mr. Rogers is an industrial engineer. I don't know that he is in the Court room now. He was this morning. They are both employed by the government.

The Court:
How long have you been with the Department of Labor.

Mr. Wheeler:
Since 1934.

Mr. All:
What division with the Department of Labor?

Mr. Wheeler:
I started in with the first National Labor Relations Board, and then I have been with the Labor Board until this division was created, the Wage and Hour Division, and I went with this division.

Mr. Burr:
What was your previous experience?

Mr. Wheeler:
Been an economist and analyst—

Mr. Burr:
What was your experience prior to becoming economist with the National Labor Relations Board?

Mr. Wheeler:
I worked—

Mr. Burr:
That is where you began your experience?

Mr. Wheeler:
I worked with Dr. Miller at the University of Chicago—

Mr. Burr:
While you were a student there you worked for him?

Mr. Wheeler:
Graduate student.

Mr. Burr:
Have you been in an Alabama mine before?

Mr. Wheeler:
Not in Alabama; in Indiana.

Mr. Burr:
Coal mine?

Mr. Wheeler:
Big coal mine.

Mr. All:
What experience have you had since you left school? Has it all been with the Labor Department?

Mr. Brodie:

If Your Honor please, I assume if we put Mr. Wheeler on the stand they will have ample opportunity to pass upon his qualifications.

The Court:

I don't think it is necessary to go into his qualifications. It is a question of who he is.

You take this stand over here and answer any questions they want to ask you.

Were you born in the United States?

Mr. Wheeler:

Tacoma, Washington.

The Court:

American citizen?

Mr. Wheeler:

Yes, sir.

The Court:

You are not a Communist?

Mr. Wheeler:

No, sir.

The Court:

I think those are pertinent questions.

Mr. All:

Mr. Costner, if we get them at Sloss at 7:30, what time can they go in Ruffner?

Mr. Costner:
It depends on how long they want to stay in Sloss.

Mr. All:
What is the inclusive time?

Mr. Costner:
They will have to be there by one o'clock. We shoot at 3:30. There will be too much smoke after that.

The Court:
How long, Mr. Costner, will it take to go through Ruffner?

Mr. Costner:
By taking indicated places, they could be back on top by noon.

The Court:
Then, how far is it from Sloss to Ruffner? Ruffner is out at Gate City?

Mr. Costner:
Yes, sir, it is twenty miles.

Mr. Harris:
I don't believe they could make two mines in one day. If they don't get a satisfactory test there is no use in their going.

Mr. All.
Who are the individual miners that are going?

Mr. Smith:
We will give them to you.

Mr. All:
We want to get them now.

Mr. Harris:
Give us a minute or two and we will find out.

Mr. Burr:
I think we ought to get the names.

Mr. All:
There will be only one of the A. F. of L.?

Mr. Harris:
Only one.

Mr. Smith:
We are just interested in three mines of the Tennessee Corporation. We will get one man.

Mr. Burr:
Give us their names.

Mr. Smith:
Just a minute.

Mr. Harris:
Will Your Honor excuse us? We will go out and see who we can give them.

The Court:
We will take a recess while you are doing that.

(Thereupon proceedings were in recess from 3:25 P. M. to 3:40 P. M., at which time proceedings were resumed as follows:)

Mr. Harris:

If the Court please, we have been able to pick out—I have worked as quickly as I possibly could, and we have picked out everybody without any question except one man at Ruffner. We think he will be available.

At T. C. I. Mine Number 4 there is Pete Dulaney.

Now, then, we don't know the dates of your other T. C. I. mines to give you first, so I will call out the man, and if you will give me the date I will fill in my paper.

Mr. Burr:

T. C. I. Number 4, 6:30 Thursday.

Mr. Harris:

Number 6, whatever date you gentlemen say, Houston Martin.

Mr. Smith:

What date?

Mr. Harris:

Can't tell yourself yet?

Mr. Burr:

Each day we will tell them where to go the next day.

Mr. Harris:

Number 7, Walter McBrayer.

Mr. Burr:

All right.

Mr. Harris:

Number 8, Ward Jefferson.

Mr. Burr:
All right.

Mr. Harris:
Number 9, C. J. McDaniel.

Mr. Burr:
All right.

Mr. Harris:
Number 10, Percy Kirby.

Mr. Burr:
K-i-r-b-y?

Mr. Harris:
That is right.

Mr. Burr:
All right.

Mr. Harris:
Number 11, Ed Patterson.

Mr. Burr:
All right.

Mr. Harris:
Number 13, Bill Thompson.

Mr. Burr:
Wait a minute. You left out Number 5.

Mr. Harris:
Number 5 is a limestone mine. I am not interested in a limestone mine.

Mr. Burr:
How about the government? I want to find out whether they think a limestone mine interests them or not.

Mr. Brodie:
If it is going to be talked about, we want to see it. We don't think any evidence regarding it would be relevant.

Mr. Burr:
We are going to contend it is relevant.

Mr. Harris:
We don't think it is relevant, but if they are going to insist on it we want to see it.

Mr. Burr:
It is a mine owned by the same company and within three hundred feet of the iron ore mine.

Mr. Harris:
Then we will want to go into it. We will get a man. Number 5, Dewey Baker.

Mr. Burr:
All right.

Mr. Harris:
With Mr Burr's other company, Raimund Mine,—that is of the Republic Company—Lewis Tarrant.

Mr. Burr:
All right.

Mr. Harris:
Your Spaulding Mine, Monty Ray.

Mr. Burr:
Monty Ray?

Mr. Harris:
R-a-y.

Mr. Burr:
Suppose we arrange to start at Republic the minute you finish at the Tennessee Company.

Mr. Harris:
Sloss Thursday.

Mr. Burr:
Judge, we have a definite understanding, as I understand, each one of these men,—that whether it is the economist or the industrial engineer or the miners accompanying them, they will all sign individual releases.

Mr. Harris:
Yes, sir.

The Court:
You can have them ready for them to sign.

Mr. Burr:
Yes, sir; they will have them ready where they report.

Then, of course, we will undergo the expense of furnishing the transportation into the mine and things of that sort, but all other expenses they will take care of themselves.

The Court:
They will go to the mines themselves.

Mr. Burr:
We wouldn't want these other men that go with them in the mines to think they are on the company's payroll.

Mr. Harris:
I didn't give Mr. All the Sloss—

Mr. All:
No, sir.

Mr. Harris:
Sloss Red Ore, Jesse Gaines; Ruffner, we think G. H. Drummond will be available. If not, we will get someone.

Mr. All:
Have you gentlemen anybody?

Mr. Spencer:
Yes, sir; Number 4, Dawson Johnson; Number 6, Fred Trammell; Number 5 Haskell Harris.

That is all the names we have at this time.

Mr. All:
That is all you can give us at this time?

Mr. Spencer:
Yes, sir.

Mr. Smith:
That is all the mines we have people in.

Mr. Burr:
If you have others it is satisfactory with us if you will give us reasonable notice so we will know who they are.

The Court:
Do that, Judge Smith.

Mr. Burr:
Your Honor has stricken the general terms, "engage in such other investigations"?

The Court:
Sir?

Mr. Burr:
You have stricken from the order the general terms "engage in such other investigation as they deem necessary"?

The Court:
Yes, sir.

Mr. Harris:
And we will insert the schedule.

The Court:
You will have it in writing?

Mr. Harris:
I have it in writing, except the change.

The Court:
All right.

Mr. Burr:
Of course, these other investigations wouldn't include talking to employees.

The Court:
I assume that is what you gentlemen will not do.

Mr. Harris:
They will not be hunting witnesses.

Mr. Burr:
I want to be sure of that.

The Court:
That is the instructions of the Court; these men are going down to inspect the mine and not interrogate other people.

Mr. Burr:
All right, sir. I think that—

The Court:
That being finished, we will proceed with Mr. Ball.

Mr, Brodie:
There is no restriction against Government representatives talking to the union representatives who go with them?

The Court:
What?

Mr. Brodie:
There is no restriction against Government representatives talking to the C. I. O. or A. F. of L. representatives that go along with them?

Mr. Harris:
You see, our representatives that go along with the Government men are going along for the purpose of helping them.

The Court:
Who are you asking they may talk to?

Mr. Harris:

For instance, when they go into Mine Number 4, Pete Dulaney is our representative there; Pete Dulaney is going to be going around with them.

The Court:

He may speak to them.

Mr. Harris:

It would be almost impossible for them—any information he wants to give them—

The Court:

About where they are going and how to get to certain places.

Mr. Brodie:

As I understand—

The Court:

You are not going into there to make an investigation or inquiry.

Mr. Brodie:

No.

The Court:

You are not going in there and quiz these people as if you are hunting evidence?

Mr. Brodie:

No.

The Court:

To a reasonable extent. I don't mean you couldn't speak to someone.

Mr. Brodie:
No.

The Court:
I think that is not necessary.

Mr. Brodie:
All right.

(By Mr. Burt):

Q. Mr. Ball, I think I asked about the average time spent in transportation from the entrance of the mine down to the underground loading station. I believe you gave me that this morning, the average time?

A. That is for getting all the men in the mine or just for one trip?

Q. For one trip. You gave that this morning?

A. Yes, sir; between five and six minutes.

Q. Between five and six minutes?

A. For the trip.

Q. Some mines would be more than that?

A. Some mines would be more and some less.

Q. Some would be less?

A. Yes, sir.

Q. That is the average mines?

A. Yes, sir.

Q. Could you give me from these surveys the average time that it takes the miner to walk from the underground loading station to his working place?

A. It is 14 minutes.

Q. 14 minutes?

A. The average.

Q. Do you remember what the longest time was as shown by the—

A. About 27 minutes.

Q. And the shortest time, do you remember?

A. I believe around 8 minutes.

Q. Do you recall how those surveys were made and when they were made upon which you base your answers to these questions?

A. The surveys were made by mining engineers and foremen walking the distances to the different working places from the man unloading station and walking at a normal rate of speed. The studies were first made in July and were then checked by engineers of the industrial relations department of the company going over the same route again in December, the industrial engineers checking the mining engineers and the operating men in the same way as they had in July.

Q. And those figures are a composite of the three checks?

A. Yes, sir.

Q. Of course, as you said this morning, if you got to trying to find out the time taken by each individual miner, that would be—

A. Impossible.

Q. —impossible in your opinion?

A. Yes, sir.

Mr. Burr:

All right, sir. I would like at this time to offer these maps. They may be of interest in these—

The Court:

Is there any objection to the map? I imagine they are accurate?

Mr. Burr:

Yes, sir, we tried—

Mr. Smith:

Is that a map of each mine, Borden?

Mr. Burr:
A map of each division, and shows each mine.

The Court:
Muscoda Division shows all mines of that division?

Mr. Burr:
Yes, sir.

The Court:
And the same as to the other divisions?

Mr. Burr:
Yes, sir.

The Court:
Borden, when were they made?

Mr. Patterson:
It will show there when you look at it.

The Court:
When were they made, Mr. Burr; when were they made?

Mr. Burr:
Sir?

The Court:
Judge Smith asked when were they made?

The Witness:
December, 1940.

Q. Extended down to January 1, 1941?
A. Yes, January 1, 1941.

Mr. Lipscomb:
Which division is this?

Mr. Burr:
I am going to identify them right now.

The Court:
Mr. Ball, does it show the mines in each division?

The Witness:
Yes, sir, the mines in each division, and the distances, and the composite average for each mine.

Q. Mr. Ball, I am showing you the map that is identified as T. C. I. Exhibit Number 1, which, in large print, has on it, "Muscoda Iron Mine, Study and Map." That has been made under your direction and supervision, showing the mines in that division which consists of Number 6 mine, Number 5 mine and Number 4 mine?

A. Yes, sir.

Q. And the distances that are marked on here and the minutes, does that indicate the distances—

A. From the mine portal.

Q. —from the mine portal?

A. To the underground loading station.

Q. To the underground loading station down that way, and then the—

A. The different red spots, the distances and time it takes to travel the usual route to the various working places.

Mr. Harris:
Have you all got the men who made the maps and the time studies?

Mr. Burr:
Yes, sir.

Mr. Harris:
This is all hearsay.

Mr. Burr:
I don't think so. He says it was made under his supervision.

The Court:
Do you know, Mr. Ball, that is correct?

The Witness:
Yes, sir, because this was all referred back to me.

Mr. Lipscomb:
Judge, you understand we are not willing to adopt the time his engineers got?

Mr. Burr:
Neither are we, because some of these men don't walk as fast as the engineers.

Mr. Lipscomb:
A lot of these men have to carry tools and equipment.

The Court:
That will be a matter of proof as to the walking time.

Mr. All:
It will be a matter of proof whether they carry tools and equipment.

The Court:
You just don't agree it is correct?

Mr. Lipscomb:
We don't adopt it.

Q. Is Exhibit 2 a correct map of the division known as the Wenonah Division which includes mines Numbered 10, 9, 8 and 7?

A. Right.

Q. And the same thing you said about the other, traveling time and distance is true about this one?

A. Yes, sir.

The Court:

You are talking about traveling time; that is walking time?

The Witness:

Yes, sir, and the time from the mine portal to the underground manloading station is indicated.

Q. The one I show you identified as T. C. I. Exhibit Number 3, and has the large printed words, "Ishkooda Iron Ore Mines", is that a correct map, and also the information stated on there, giving in the same way as you testified about Number 2, the information with reference to Number 11 mine and Number 12 mine of the Ishkooda division?

A. Yes, sir; correct.

The Court:

The same is true about that?

The Witness:

Yes, sir.

Mr. Harris:

I would like to have these maps tonight to study them, if that is agreeable.

The Court:

Delighted.

Q. Is the map I show you marked T. C. I. Exhibit 4, which bears the designation, "Limestone Mine, Muscoda," is that correct as to that mine?

A. Yes. It must be remembered in connection with this map, Mr. Burr, that on the Muscoda Division you could not show it there because this mine is up above the stone mine?

Q. And you had to make a separate map for the limestone mnie?

A. Separate map.

The Court:

There is a question in my mine whether the limestone mine would be admissible.

Mr. Harris:

Your Honor will recall I objected to that and stated I didn't consider any limestone mine had anything to do with it. I don't see it has.

Mr. Burr:

Your Honor can pass on that after you hear us.

The Court:

I will pass on it. I will permit testimony on it and if the Court thinks it is improper, it will be excluded.

Mr. Burr:

Our position is Section 7 doesn't mention iron ore or limestone or any other kind of mine, and—

Mr. Harris:

In that connection, I think we should call your attention to the fact that section is not limited as to mines.

Mr. Burr:

That is true.

Mr. Harris:

This law wasn't passed for some little ore mines out here.

Mr. Burr:

No, sir; it includes our steel plant with fences around it.

Mr. All:

Your Honor will mentally exclude that if you determine it is not proper?

The Court:

Yes, or I might state to you gentlemen I will not consider it either way.

Mr. All:

Yes, sir.

Q. Now, Mr. Ball, I believe you say you have been connected, and have given the details of that connection, with iron ore mining in this district since what year now?

A. About 1902.

Q. I will ask you whether or not since 1902 down to May 1, 1941, the underground mine workers have ever been compensated or paid for the traveling time as part of the day's work?

Mr. Harris:

We object on the theory which I have heretofore indicated to Your Honor.

Mr. Burr:

I—

Mr. Harris:

We object to anything that happened before the Fair Labor Standards Act went into effect; that if those

customs, if they had customs, if those practices,—if they had the power to adopt practices as they were existing throughout the United States, and the rights of litigants covering 48 states in every conceivable industry are to be affected by the customs, then Congress might just as well have kept silent. The law was passed to wipe away all those customs and practices just like going into a room and brushing out the cob webs and cleaning it up and letting the light in.

Following our theory, if they had a custom the other men had agreed to, if they had a practice the other men had power to dispute and had failed to dispute that, none of those things would have any bearing on the question of whether or not men were at work and whether or not they have been at work since this law went into effect.

Mr. Burr:
If Your Honor please, of course, my position—

The Court:
I will overrule the objection.

Mr. Harris:
We except.

Mr. Burr:
Did you understand the question?

The Witness:
Read it, please.

(Thereupon the reporter read the question last propounded as above recorded.)

Mr. Harris:
I repeat my objection.

The Court:
Overruled.

Mr. Harris:
Except.

A. They have not.

Q. I will ask you as to what the universal custom has been since you have been connected with the iron ore mining in Alabama—

Mr. Harirs:
We have the same objection to the line of testimony.

The Court:
The same ruling.

Q. —with reference to how the underground employees' time was computed and paid for; that is, whether it was computed and paid for from the time transportation began at the portal, and until the time transportation ended coming out at the portal, or whether it was computed and paid for on the time spent at his working place.

A. The time was computed and paid for at his usual place of work underground, and was known as face to face.

Q. Has that been the universal custom all these years?

A. Yes, sir, it has.

Mr. Harris:
By universal you mean here in the Alabama ore mines?

Mr. Burr:
Yes, sir. I am not going to travel out of Alabama. Now, the next matter I have got is going to take a good long time. Does Your Honor want to run on? Your Honor said between four and four thirty.

The Court:
I think we will adjourn now.

Mr. Harris:
It is all right with me.

The Court:
What time do you want to meet back in the morning?

Mr. Burr:
Your Honor said nine.

The Court:
We will adjourn at 4:00 o'clock and meet tomorrow morning at 9:00 o'clock.

(Whereupon, at 4:05 P. M., July 8, 1941, an adjournment was had to 9:00 A. M., July 9, 1941.)

July 9, 1941, 9:00 A. M.

Court met Pursuant to Adjournment.

The Court:
Let's proceed.

Mr. Burr:
Come around, Mr. Ball.

805 E. M. BALL thereupon resumed the stand, and having been previously sworn, testified further as follows:

Direct Examination—Resumed.

(By Mr. Burr):
Q. Mr. Ball, on May 1, 1941, was the Tennessee Company at its ore mines operating on, so far as computing

wages and paying the men, on a shift basis or hourly wage basis?

A. They were paid on an 8-hour hourly wage basis.

Q. For how long previous to that had they been on an hourly wage basis?

A. Back about until 1914, when the contract system was abolished.

Q. I see. Previous to that time they were on what is called the contract system?

Mr. Harris:

Your Honor understands we have an objection to everything that happened before 1938?

The Court:

Yes, sir.

Mr. Harris:

The same line we had yesterday.

The Court:

The same ruling and exception.

Q. Can you tell the Court in a general way how those hourly rates were established, how the company reached the rates, and how they were established?

Mr. Harris:

I don't think that is important, Judge. Why should the internal calculations and computations of the company on figuring rates be material to us? We would have to go into each operation.

The Court:

I think so. I sustain the objection.

Mr. Burr:

I think Your Honor, in fairness, ought to know what I have in mind. I know it is difficult in this case for anyone to understand, unless they do kind of look into the other fellow's mind and know what he is thinking about.

Now, it is our position that the company established these hourly rates after making a study of the occupational rates and putting it on a scientific basis, and they all revolve around the eight hour day at the working place, and the complaint is just—that is one of the meaty items in the complaint; that the effect of this is to cause us to change our basis of rate making and everything else. It is certainly a matter that throws light on the situation, and as suggested yesterday, Your Honor is going to have to determine this case after you have heard all the evidence and viewed all the evidence.

The Court:

Oh, yes.

Mr. Burr:

I certainly wouldn't offer the evidence unless I thought it had a relevant bearing.

Mr. Harris:

I—

Mr. Burr:

Just a minute, Mr. Harris.

I am not talking into detailed examination at this time as to how it was done. I want to prove the fact these rates were created in 1915 and based on studies of the occupational rates; that it was an occupational rate in contrast with an individual rate. Your Honor understands what we mean. In other words, it means this: The com-

pany made a study of the occupation of a mucker, what that rate should be, after studying his basis, his work, after taking what a standard ought to be, they based it on 80 per cent of 100 percent. That gives you the set-up I want to show the rates after 1915 were on an occupational rate basis on an 8-hour day at the working place. That is the question I want to ask, and I think it is admissible.

Mr. Harris:

The question of Mr. Burr believing it is admissible, I don't challenge that, but it is the fact different lawyers have different opinions which call forth objections and arguments during the course of a trial.

I am equally convinced that is wholly inadmissible. In the first place, he goes back 23 years before—23 years before the immediate time involved. Then he says we decided to pay a certain price based on certain studies that we made. Now, Does Your Honor want to call in those experts, whoever they were, that made those studies to check up to see how they made them and what they made? What difference does it make what thoughts run through the minds of men when the question is one of fact?

We are not investigating mental processes or mathematical calculations. Now, if they are going to determine the reasonableness of those calculations, how can we determine them without going into costs, and he said day before yesterday or yesterday he was not going into any costs at all, that that is wholly beside the question.

Now, he says, we are not going to let you see the picture as it affects our business, but we will let you see what we figure these men should have on some studies we made back yonder. Now, if we are going into that we are going into an interminable investigation of irrelevant matters, and I suggest this is neither the time nor place to investgate the mental operations of officers of this plaintiff that handled those things for the T. C. I. Company.

Mr. Burr:

May it please the Court, his last statement makes it clear why this matter is material.

The further you go back on a matter, the more light it throws on the subject if you can show there was a continuous custom. In other words, in construing what Congress meant by legislation of this sort, the further back the custom goes the more Congress is charged with knowledge of the custom in passing these laws. So much for the time back. I am asking it to show it has been continuous from that time on until now.

Now, we are not concerned here with the mathematics of this question; we are not concerned with the fairness of it; we are not concerned with whether the company fixed the occupational rate too high or too low. All I am asking to prove is the simple fact since 1915 this company, after study, fixed an occupational rate, and that was fixed on the 8-hour day, and further than that, these men have acceded to that time after time since then by taking the pay on that basis.

The Court:

I overrule the objection.

Mr. Harris:

We except.

Q. Is that a fact or not? How about this occupational rate, how was it made?

Mr. Harris:

Same objection.

A. By a study by the industrial engineers, taking into account—

Mr. Harris:

He is telling what somebody took into account.

Q. You know about this?

A. Yes, sir.

Q. It was done under your supervision?

A. Yes, sir.

Q. All right; proceed.

A. The jobs were investigated to determine an occupational rate and a rate per hour was set for each occupation.

Q. Was that rate set on an 8-hour per day basis?

A. It was set on a 10-hour basis.

Q. It was set on a 10-hour per day basis?

A. Yes, sir.

Q. Then, did you subsequently change from 10 hours to 8 hours?

A. We did.

Q. Were the rates then placed on an 8-hour basis?

A. They were fixed on an 8-hour basis, but it was a give and take. In other words, we split on 9 hours to get a new hourly rate.

Q. Did that rate include transportation?

A. It did not include transportation.

Q. Then there came in what has been referred to as the incentive plan. When did that come in?

Mr. Harris:

Same objection.

The Court:

Same ruling.

Mr. Burr:

Yes, sir.

A. In August, 1936.

Q. Just explain briefly what the incentive plan was without going into great detail about it in order that the Court—

Mr. Harris:

In order that I might not have to repeat, is it understood everything back of 1938 we are objecting to on all grounds?

Mr. Burr:

That is satisfactory to me.

The Court:

All right.

Q. All right, Mr. Ball.

A. The employees were guaranteed a certain rate, or a certain rate for eight hours of work at their usual working places underground. In addition to that, if the mine crews loaded over a certain number of tons, which was called a base tonnage, they received extra compensation for that tonnage. That, in brief, is the incentive plan.

Q. That has been in operation since the date you named?

A. August, 1936.

Q. All right. Now, I will ask you during that entire period of time you have testified about, from 1915 down to May 1, 1941, if the occupational rates always excluded traveling time, and were based on work at the working place?

A. It was.

Q. Do you recall, Mr. Ball,—this Act, I think I can properly state, that we refer to as the Fair Labor Standards Act of 1938, went into effect on October 24, 1938.

I will ask you whether or not if prior to that time the company had established payment for overtime?

A. They had. Approximately the latter part—it was either in December, 1936, or in January, 1937,—along in that period.

Q. What was the overtime they established at that time?

A. Time and a half for any work over the 8-hour period.

Q. I see. Now, state whether or not in computing that overtime under the custom that existed and continued to exist until May 1, 1941, if transportation time was included or not included?

A. It was not included?

Mr. Brodie:

If Your Honor please, I would like to interpose an objection to the form of the question. Mr. Burr has continually referred to the custom. What is a custom is a mixed question of law and fact. It may have been the practice of the company, but there is no evidence the men acceded.

The Court:

As I understand, he is asking what the custom and practice is.

Mr. Burr:

Yes, sir, and the evidence will show every man knew it, and there is no conflict to it; that they got a pay statement every week that showed exactly what they were getting. There are not any of our miners going to claim anything to the contrary.

Mr. Lipscomb:

We wish to say it is not a fact, and we expect to prove it is not a fact. Our men didn't want to do it.

Mr. Burr:
We will meet you, Jim, when it comes in.

Mr. Lipscomb:
I don't think it is necessary—

Mr. Burr:
Take it out of the record. Leave it out of the record.
I was arguing in reply to the objection of the other gentleman.

The Court:
Go ahead.

Q. Can you tell us, Mr. Ball, what was the average maximum wage for underground miners—

Mr. Brodie:
I object to that, Your Honor, on the ground it is illegal and irrelevant to this case. The issue is when these men were at work. What they were paid before a particular date or what they are paid now, what their hourly rate is, is immaterial. It only becomes material on the question of damages.

The Court:
Overruled.

Q. What was the average maximum rate prior to May 1, 1941?
A. The average rate—by the average rate I mean the average of the rates for the different occupations, of which there are a great many,—was 68 cents per hour.
Q. Do you know what the minimum rate was?
A. The minimum rate was 54½ cents per hour.

The Court:
That was before May 1st?

Mr. Burr:
Yes, sir.

The Witness:
Yes, sir.

Q. Has there ever been a time since the enactment of this act when the wages of the underground employees have been as low or lower than the minimum prescribed by this act?

Mr. Brodie:
I object to that, if Your Honor please.

The Court:
Overruled.

Mr. Burr:
Yes, sir.

A. Please state that again.

Q. The minimum prescribed by the Act, you understand, is thirty cents an hour?

A. Yes, sir.

Q. Have the wages of any of the underground employees of the company, since the act was enacted and for several years prior thereto, ever been as low as thirty cents an hour?

A. They have not.

Q. And the minimum you gave is what they were—how far back of May 1, 1941, did that go?

A. Oh, that goes back several years.

The Court:
What is the average minimum?

Mr. Burr:

The average minimum is 54½ cents per hour,—that is the minimum, and the maximum was 68 cents per hour.

The Court:

All right.

Q. Mr. Ball, the complaint alleges that there were two union organizations in your—in the ore mines of the company on and prior to May 1, 1941?

A. Yes, sir.

Q. Would you give us the names of those two organizations as of that date?

A. One was the International Union of Mine, Mill & Smelter Workers, the CIO affiliates, and the other was the Red Ore Miners Union, affiliated with the A. F. of L., American Federation of Labor.

Q. All right, sir. In asking you questions about those two union organizations I will refer to the International Union of Mine, Mill & Smelter Workers as the Smelters Union, and I will refer to the Red Ore Miners Union as the American Federation Union.

A. Yes, sir.

Q. In that way we can keep from having to repeat those words.

A. Yes, sir.

Q. Will you tell us when the Smelters Union first was active and—

Mr. Harris:

We object, if the Court please, illegal, irrelevant, incompetent and immaterial.

The Court:

Overruled.

Mr. Harris:

Going back of the year 1938, the effective date of the act.

The Court:

Overruled.

Mr. Harris:

We except.

Q. When did it become active among your employees?

A. The summer of 1933.

Q. Well, in the summer of 1933 they began organizing in your camp?

A. Yes, sir, each division. There was a local organization at each of the ore mines divisions, Muscoda, Wenonah and Ishkooda.

Q. Do you recall the numbers—

Mr. Harris:

Without having to repeat my objection, I have the same objection?

The Court:

Same ruling.

Q. Do you remember the numbers, the Muscoda Local, 123?

A. I think it was 123.

Q. Wenonah 157?

A. Yes, sir.

Q. And Ishkooda 153?

A. Yes, sir.

Q. Do you recall being present at a conference that was held between representatives of those three locals and some of their general officers, including the defendant Van Jones, which was held in the president's office for a

conference with the management on or about October 19, 1933?

A. I do.

Mr. Smith:

We object to that so far as it applies to the A. F. of L., if the Court please.

The Court:

This is in reference to the Smelters?

Mr. Smith:

CIO organization.

The Court:

That is the CIO organization?

The Witness:

Yes, sir.

Mr. Smith:

That wouldn't be applicable to us.

The Court:

Yes, sir.

Mr. Burr:

We think it is all to be considered on the intent of Congress.

The Court:

Yes, sir, it may be admissible on that. That is why it is admitted.

Q. Do you recall who was present at that conference, Mr. Ball?

A. Mr. Van Jones, Mr. Charley McDaniel, Mr. Richard Anderson,—

Mr. Harris:
I am sorry, I didn't hear that.

The Witness:
Mr. Richard Anderson.

Q. Mr. Richardson Anderson—
A. Mr. Pegues—

The Court:
He is one of the defendants, isn't he?

Mr. Burr:
Yes, sir, he is one of the defendants.

A. Frank Allen, Will Mahan, and Morris Smith, colored. The company representatives were Mr. Gregg—

Q. What position did he hold with the company at the time?

A. President of the Tennessee Coal, Iron & Railroad Company; Mr. J. F. Vance, Manager of Industrial Relations; Mr. C. E. Abbott, Vice President in Charge of Raw Materials; and myself.

Q. At that time did the Union representatives present a number of suggestions or request or demands, whatever you might call it, to the company they wanted acted upon representing their membership?

Mr. Harris:
If it is in writing, the writing would be the best evidence.

Mr. Burr:
I am going to get to that right now. I am going to show how it was done.

The Court:
He can say yes to that.

A. They presented eight or nine demands.
Q. Were they presented orally or in writing?
A. They presented a written demand, written request, rather.
Q. I will ask you to look at this memorandum and see if that is the one taken at the time?

Mr. Harris:
In addition to our usual objection we have in, the writing would be the best evidence.

Mr. Burr:
I am refreshing his recollection. There were two of these meetings; one is in writing, and one is not.

A. Yes, sir.

Mr. Smith:
Was this in 1933?

Mr. Burr:
Yes, sir, in 1933.

A. Yes, sir. This is an answer to the suggestions.
Q. The suggestions were not in writing at this particular meeting?
A. Yes, sir, I think they were. They may have been in the form of a memorandum.
Q. Does this memorandum set out these suggestions and requests made at that time?
A. It does.
Q. And sets them out correctly?
A. Yes, sir.
Q. And does it set out the replies made by the company?
A. It does.

Mr. Harris:
Where is the original?

Mr. Burr:
Here it is right here.

Mr. Harris:
I thought you said that was a memorandum.

Q. Was this memorandum taken immediately at the meeting?

Mr. Harris:
This is just a typewritten statement. We don't know when it was taken or who took it. The person that took it is not here.

Mr. Burr:
I wish you would read it. You might not object to it.

Mr. Smith:
Did you make it?

The Witness:
Sir?

Mr. Smith:
I asked if you made the memorandum yourself.

A. No, sir. The president's secretary made the memorandum.

Q. Now, while they are looking at the memorandum, will you tell us independently of the memorandum what request was made by those union representatives you have named with reference to traveling time in the mine, independently of anything in writing?

Mr. Harris:
We object to it on all the grounds previously assigned.

The Court:
Overruled.

Mr. Harris:
We except.

A. There was a request made the men enter the mine on the company's time and come out on their own time.

The Court:
That was in 1933?

The Witness:
Yes, sir.

Q. In '33?
A. Yes, sir.
Q. State whether or not that was the first time any request has been made by any union organization or members to the management with reference to traveling time?

Mr. Brodie:
I object to that.

The Court:
Overruled.

A. Yes, sir.

Mr. Brodie:
May the record show I have an objection to all this line of testimony?

The Court:
Yes, sir.

Mr. Burr:
Sure; you are objecting to it; you are objecting to this testimony?

Mr. Brodie:
Yes, sir.

Mr. Burr:
You are objecting to what is the practice and custom between these parties?

Mr. Brodie:
Yes, sir.

Mr. Harris:
I have been objecting all the time.

Mr. Burr:
Yes, sir, but I want it understood the government is objecting also.

Mr. Smith:
May it be understood our objection goes along also? I don't want to state my objection if it is not necessary.

The Court:
Yes, sir.

Mr. Brodie:
May I state my grounds?

The Court:
Yes, sir.

Mr. Brodie:

That agreement between parties can't set aside the terms of the statute.

The Court:

Overruled. This was back of the statute.

Q. Can you tell what reply was made by the management in answer to the request that the men should enter the mine on company time and come out on their own time?

A. The reply was at that time there was no code for the ore mines and the ore mines were following as closely as possible the code set up for the coal mines in this district, and that code called for 8 hours work at the usual working place, and a 40-hour week; that a differential would be maintained between the rates paid the coal miners and the rates paid the ore miners.

Q. When that statement was made with reference to the Code of the Bituminous Coal Mining Industry, do you refer to the NRA Code?

A. I do.

Q. Is it true at that time there had been a code adopted for the coal mines and none had been adopted for the ore mines?

A. My recollection is there had been no code adopted for the ore mines and there had been one adopted for the coal mines.

Q. Was any code ever adopted for the ore mines?

A. There was not.

Q. And that was the response made by the Company in reference to that request?

A. It was.

Q. I will ask you to read this memorandum and state whether or not it was made co-temporaneously with that meeting and sets forth all the demands that were made and all the replies that were made at that time correctly?

A. Yes, sir; this was the memorandum.

Mr. Burr:
We will ask this be identified as—

The Clerk:
T. C. I. Exhibit No. 5.

Mr. Burr:
5?

The Clerk:
Yes, sir.

(Thereupon the said document, entitled, "Copy of memorandum of meeting held in office of president, October 19, 1933, with a committee of seven men purporting to represent certain employees of the ore mining division, Tennessee Coal, Iron & Railroad Company," was marked T. C. I. Exhibit No. 5.)

Q. Was Mr. McDaniel that was present there the same Mr. McDaniel that is sitting over here now?
A. Yes, sir.
Q. The same gentleman?
A. Yes, sir.
Q. And Mr. Van Jones was there, I believe you said, but he is not here this morning?
A. He was there, but he is not in the Court room.
Q. And Pegues, another defendant?
A. Yes, sir.

Mr. Burr:
We offer this in connection with his testimony.

Mr. Smith:
What is that?

Mr. Burr:
This memorandum.

Mr. Harris:
Same objection.

The Court:
I don't know whether that is admissible or not.

Mr. Burr:
I am offering it in fairness so they shall have it and Mr. McDaniel can check it.

The Court:
I will let it go in.

Mr. Harris:
We except.

Mr. Burr:
Shall I read it to Your Honor.

The Court:
Yes, sir.

(Thereupon Mr. Burr read T. C. I. Exhibit No. 5 to the Court.)

Mr. Burr:
Now, we offer the entire paper, but we offer as relevant the part of it in relation to this transportation time. The other,—we thought it was fair to have the entire paper in there.

Mr. Harris:
The same objection.

The Court:
Same ruling.

Mr. Harris:
As I understand it, Your Honor doesn't require me to detail the objection? There are some eight or ten different objections.

The Court:
No.

Mr. Harris:
I haven't repeated the grounds each time, but I understand I can assign any objections I please.

The Court:
That is satisfactory.

Mr. Burr:
That is perfectly satisfactory. You can assign any grounds you please now or later.

Q. All right, sir. Now, I will ask you if on April 13, 1934, another meeting was held with the President of the Company and with representatives of the union and representatives of the management concerning some written demands that were made upon the company by the Smelters' Union?

A. There was. They submitted a form of proposal for a written contract.

Mr. Burr:
Will you please mark this as an Exhibit?

The Clerk:
That will be exhibit T. C. I. Number 6.

(Thereupon a document headed "Bessemer, Alabama, April 13, 1934," and bearing the signatures M. C. Anderson, C. J. McDaniel, Van D. Jones, M. E. Adams, Morris Smith and E. A. Sisemore, was marked T. C. I. Exhibit No. 6.)

Q. I show you now, Mr. Ball T. C. I. Exhibit Number 6 which purports to be a statement or a letter directed to the Tennessee Coal, Iron & Railroad Company, Attention Mr. Robert R. Gregg, President, in re Muscoda Division, Wenonah Division, and Ishkooda Division, and signed by M. C. Anderson, Number 153, C. J. McDaniel, Number 157, Van D. Jones, Number 123, M. E. Adams, Number 123, Morris Smith, 157, and E. A. Sisemore,—

A. Yes, sir.

Q. —is that the original proposal submitted at that time by this union?

A. Yes, sir.

Q. Smelters Union?

A. Yes, sir.

The Court:

What is the date of that?

Mr. Burr:

That is dated April 19, 1934.

Now, we offer this and offer particularly as relevant in this case the request Number 8 in the contract or paragraph 8 in the contract which reads as follows:

"In view of the fact that the company can force the men to enter and leave the mines at any time stated by the company, we ask the right to enter on our own time and leave on the company's time."

Do you gentlemen want to see this?

Mr. Brodie:
Yes, sir, I would like to see it.

Mr. Burr:
Off the record, I wonder if it would be satisfactory with the Court and these gentlemen to substitute copies for the originals?

Mr. Harris:
It is satisfactory with me.

Mr. Lipscomb:
We would like to see the originals.

Mr. Burr:
Sure, I have here. You can check them now or later.

Mr. Smith:
I would like to get a note it doesn't apply to the A. F. of L.

Mr. Lipscomb:
We were in the A. F. of L. at that time.

Mr. Burr:
We submit it applies to everybody as showing the intention of the Congress.

The Court:
It is being admitted to show the intent of Congress when the Act was passed October 24, 1938.

Mr. Harris:
What I understand from your request is that you produce the originals and later substitute copies?

Mr. Burr:
That is right.

Mr. Harris:
I don't have any objection to that.

Mr. Quinn:
What exhibit is that, Mr. Burr?

Mr. Burr:
Exhibit Number 6.

Q. Now, do you recall—was there a memorandum made at the time that was given to the representatives of the union—will you mark this, please, sir?

The Clerk:
T. C. I. Exhibit Number 7.

(Thereupon a document entitled "Memorandum of Replies Made to Proposals submitted by Committee Composed of the Following Employees of Tennessee Coal, Iron & Railroad Company," was marked T. C. I. Exhibit No. 7.)

Q. —which I show to you and which has been marked T. C. I. Exhibit Number 7.
A. There was at that time.
Q. The replies were placed in writing?
A. Yes, sir.

Mr. Burr:
I will give you all a copy of this if you would like to have it.

Mr. Harris:
We would like to have it.

Mr. Burr:
Here it is right here.

Q. I will ask you to examine defendants' Exhibit—T. C. I. Exhibit Number 7 and state whether or not the following reply which is headed Item 8, was made by the management to the men at that time:

"When we changed the working time in the mines from ten hours to eight, we found that the average time spent at the face was about nine hours. We then adjusted the wage to equal nine hours pay for eight hours at the face, or regular working place, so that we feel we have done all that you now request. There must be a regular starting time and quitting time for the orderly operation of the mines and we are convinced that our present policy is fair and proper."

A. Yes, sir, that reply was made.
Q. And the other replies, if they should become relevant, were made to the other suggestions?
A. Yes, sir.
Q. As shown in this written memorandum?
A. Yes, sir.

Mr. Lipscomb:
Your Honor, will you let me see the original letter at this time?

Mr. Burr:
Yes, sir.

Q. I will ask you, Mr. Ball, if that was the second time that the management ever received from anyone any request that any portion of the transportation time be considered as part of the days' work, and computed in the pay.

A. That was the only two times.

Q. In other words, the time in the meeting with the president, and this time, were the only two times you heard this question suggested by anybody?

A. Yes, sir.

Q. And the suggestion was not portal to portal, but fifty-fifty?

A. Yes, sir.

Q. That was the only times?

A. Yes, sir.

The Court:

That was in 1933 and 1934?

The Witness:

Yes, sir.

Q. Now, I will ask you if at this time, April 13, 1934, without going into the merits of the strike at all one way or another, was there a strike at your ore mines on Red Mountain at that time?

A. At that time—the strike went into effect on the morning or evening of May 4th. It was on May 4, 1934.

Q. Was that strike called and conducted by the Smelters Union? Was it a Smelters Union strike?

A. It was.

Q. Was the Union sufficiently strong at that time to force the closing down of your mine? Did they close them down completely?

A. All our mines were closed down.

Q. By the strike?

A. Yes, sir.

Q. Will you tell us how long that strike continued? When did the mines reopen?

A. They reopened on approximately July 2nd or 4th, and operated for three or four days when all the mines

had to be closed down again due to lack of orders for materials.

Q. Now, Mr. Ball, between the time of the beginning of that strike and before the mines reopened, did you attend a number of conferences with representatives of the Union in an effort to settle the strike?

A. I did as I remember it.

Q. Do you recall whether or not any gentleman here in Birmingham was selected by both sides to sit in on those conferences to see if an agreement could be reached?

A. General Persons of the First National Bank sat in on those conferences as umpire.

Q. What did those conferences—what was the subject matter of those discussions? I will put it this way, because there is no use bringing all the other up: I will ask you to state whether or not at any time at any of those conferences the representatives of the Union brought up again or in any way indicated on this half and half or portal to portal plan of computing and paying wages?

A. I believe there were three such conferences held in the Board room of the American Trust Building at which were present Mr. Jim Lipscomb, the president of the three different locals, and myself, and several superintendents representing the company:

There were two points that were discussed at these meetings. One was—

Mr. Harris:

I don't see the materiality of what points were discussed. The question is whether that was discussed.

Q. I don't care for that if they don't want it.

Was the payment for transportation time brought up or discussed or considered at those meetings?

A. It was not.

Q. You say there was three of those meetings?

A. As I remember, approximately three of them. There may have been four.

Q. Do you remember whether the defendants Van Jones and Pegues attended those meetings?

A. Yes, sir.

Q. And the presidents of the locals?

A. The presidents of the locals with some other committeemen.

Q. Now, did those meetings settle the strike or not?

A. They did not.

Mr. Harris:

We object to that. That calls for a conclusion.

Q. All right. Did the strike continue after the meetings?

A. It did.

Q. Now, had the company accumulated prior to the strike a stock pile of iron ore on the mountain, surplus stock?

Mr. Brodie:

We object.

Mr. Harris:

We see no materiality in that if the Court please.

The Court:

I don't either.

Mr. Burr:

All right, sir. I might state to the Court what we offer it for. It may become material later. It is very material in anticipation because that is one question Your Honor required us to answer interrogatories on, and the answer is on file. They asked us about the stock pile.—

The Court:
I think that was in recent years.

Mr. Burr:
I don't remember the date.

The Court:
I think it was in 1938, 1939, and 1940.

Mr. Burr:
If it comes up later, I will show Your Honor what I had in mind. I don't see how it can be—I imagine their theory was at the time they made it they could thereby show we were able to accumulate a stock pile and could work under this new plan the same way.

I just wanted to show that has been the custom and habit of the company for years and years, and is of all companies, to accumulate a surplus stock.

The Court:
For that limited purpose, I will let it in.

Mr. Burr:
All right.

Q. Did you have a stock pile accumulated?
A. We had three piles.
Q. About how many tons?
A. Approximately 700,000 tons.

Mr. Lipscomb:
As of 1934?

Mr. Burr:
Yes, sir, at the time of the strike.

Mr. Brodie:
How many tons?

The Witness:
About 700,000 tons, I believe.

Q. Has it been the practice and custom previous to that time and ever since, to accumulate a surplus stock of ore?
A. It has.
Q. In case of emergency?
A. Yes, sir.
Q. During this mine strike in 1934, were the manufacturing plants kept in operation by means of that stock pile?
A. They were.

Mr. Harris:
We don't see the materiality of that, if the Court please.

The Court:
I don't either.

Mr. Harris:
If Your Honor lets him show they were accumulating and using at that particular time—

Mr. Burr:
Just showing the emergency existed and they used it.

The Court:
The purpose—

Mr. Burr:
We don't insist on it.

Q. I will ask you when did that strike close and when did the mines reopen in 1934?

A. Approximately on July 2nd or July 4, 1934.

Q. Do you recall the circumstances under which they were reopened and whether or not any written letters or agreements were made with the union at that time?

A. Yes, sir.

Q. Now, Mr. Ball,—mark this, please.

The Clerk:

T. C. I. Exhibit No. 8.

(Thereupon a document dated June 25, 1934, and addressed to Honorable Francis Perkins, Secretary of Labor, Commissioner James Dewey, Commissioner C. L. Richardson, consisting of two pages, to which are attached nine other pages, was marked T. C. I. Exhibit No. 8.)

Mr. Burr:

Do you gentlemen want to see this before I ask about it? These are the letters of understanding by which the men went back to work.

Mr. Harris:

I have seen it.

The Court:

What is that, Mr. Burr?

Mr. Burr:

The letter of understanding showing the terms under which the men went back to work.

The Court:

Do you have the original?

Mr. Burr:

No, sir. Madame Perkins has the original, of course.

The Court:

Do you want to compare them with your copy?

Mr. Lipscomb:

We have compared our original with our copy.

Q. Now, Mr. Ball, I will ask you please, sir, to examine T. C. I. Exhibit Number 8 and state whether or not that is a copy of the letter that was sent on or about June 25, 1934, to Honorable Francis Perkins, Secretary of Labor, Commissioner James Dewey, Commissioner, C. L. Richardson, which states, "This is to confirm the understanding reached today at the conference between representatives of employees of our ore mines and the management."

A. Yes, sir, that is a copy of that letter.

Q. And attached to it is a written classification of occupation, and showing the present occupational rate of each occupation and the new one that was reached by the settlement?

A. That was correct.

Q. For instance, camp watchman, the present rate was 51½ cents, and the proposed rate was 54½ cents?

A. Yes, sir.

Q. And on down through each rate?

A. Each rate.

Q. Were each one of those rates decided upon in this conference?

A. They were.

Q. Were each one of those rates based on eight hours at the usual working place, or did they include transportation?

Mr. Harris:

We object to that question, what they were based on. It speaks for itself.

Mr. Burr:

No, sir, it doesn't. I think it does, too, but I want to make it clear.

The Court:

I think you can ask him briefly. It speaks for itself, doesn't it?

Mr. Burr:

It says, "Rate per hour," and "Present," and "Proposed." It doesn't say anything about transportation.

The Court:

It doesn't say anything about transportation at all?

Mr. Burr:

No, sir. It says, "Rate per hour."

The Court:

I will let him go into it.

Q. Was it understood and discussed at that meeting and agreed that the pay should exclude or should include transportation; what was the agreement?

A. Exclude transportation. In fact, that was not discussed, but it was discussed these rates were to be paid for underground and surface occupations, and the underground occupations were at their usual place of work underground, 8 hours.

Q. Eight hours?

A. Yes, sir.

Q. Just like it had been in the past?

A. Yes, sir.

Q. As a matter of fact, I will ask you whether in any of those conferences with General Parsons you have told us about, or with either of the two Commissioners of Conciliation, Dewey or Richardson,—at any of those conferences did the representatives of the Union bring up or insist on payment for transportation at any time?

A. They did not.

Q. Never was suggested in any of those conferences?

A. No, sir.

Q. Did the men go back to work under this letter of understanding?

A. They did.

Q. And continued to work as they had worked at their usual working places at these rates?

A. They did.

The Court:

Do you gentlemen want a recess?

Mr. Burr:

Yes, sir.

The Court:

A few minutes recess.

(Thereupon proceedings were in recess from 9:55 A. M., to 10:10 A. M., when proceedings were resumed as follows:)

Mr. Burr:

Shall we proceed, Your Honor?

The Court:

Proceed, yes, sir.

Mr. Burr:

Will you mark this the next exhibit number, please?

The Clerk:

T. C. I. Exhibit 9.

(Thereupon a document entitled "Tennessee Coal, Iron & Railroad Company, Muscoda Division, Held in General Superintendent E. M. Ball's Office on June 13, 1935," to which was attached a form of contract consisting of four pages, and a letter dated June 24, 1935, addressed to Mr. Byrd Barksdale, Mr. Charlie McDaniel and Mr. M. C. Anderson, was marked T. C. I. Exhibit No. 9.)

Q. Mr. Ball, will you please, sir, examine the paper marked Defendants—T. C. I. Exhibit Number 9 and state whether or not on June 13, 1935, you had a meeting with the representatives of the Smelters Union in which they presented to you the proposed contract which is attached here?

A. Yes, sir, I did.

Mr. Brodie:

May I ask what year that is?

Mr. Burr:

June 13, 1935.

Q. What happened at that meeting?

A. They presented the form of proposed contract which I submitted to the management. I had no authority to negotiate wages and hours of work.

Q. Are the minutes of that meeting—do they appear correctly—

A. Yes, sir.

Q. On this exhibit?

A. Yes, sir.

Q. All right, sir. Now, I will ask you to state whether or not that proposed contract was referred to you by the management?

A. I referred it to the management.

Q. Did you meet with the Union representatives and the President when it was considered?

A. Yes, sir.

Q. I will ask you to examine the third document attached to this exhibit and state whether or not that is a copy of the understanding that was reached at that time with the Union officials?

Mr. Harris:

Will you identify the documents?

Mr. Burr:

They are already identified.

A. That was signed by Mr. John L. Perry, who was president of the company at that time.

Q. I notice it was addressed to Mr. Barksdale, President of the Muscoda Local, Mr. McDaniel, President of the Wenonah Local, and Mr. Anderson, President of the Ishkooda Local, and a copy to Mr. A. E. Horn?

A. Yes, sir.

Mr. Burr:

Do you gentlemen wish to see this before I read it?

Mr. Smith:

What is that?

Mr. Burr:

The proposed contract and letter of understanding settling the question.

Mr. Harris:

I am not offering separate objections because we have an objection to everything—

Mr. Burr:

I understand your position is everything prior to the enactment of the Act is out of the window. If your theory is correct we wouldn't have any case here at all.

Mr. Harris:

Sometimes very complicated matters are settled by a very simple proposition.

The Court:

Sometimes it is a good way to tangle the judge too.

Mr. Harris:

If you don't mind, when you get through have all your originals together and I can take them for cross examination in the order you have them.

Mr. Burr:

Yes, I have them that way. I am not going to take any out because I am so prone to lose papers.

I will read to Your Honor what these exhibits are. The first is the minutes of the meeting on June 13, 1935, in the general superintendent's office.

(Thereupon Mr. Burr read to the Court the minutes of the meeting on June 13, 1935, as embraced in the first sheet of T. C. I. Exhibit No. 9.)

Mr. Burr:

And then presented at the same time—

Q. This is the proposed contract presented at the same time?

A. Yes, sir.

Q. It contains in paragraph 9 this provision:

"It is agreed that the employees shall enter the mine on their own time and come out on the company's time."

A. Yes, sir.

Q. All right. Did you meet with the same representatives of the Union in the President's office when this contract was considered?

A. We did.

Q. Now, at that meeting was the agreement as shown in this letter reached?

A. It was. It was just a continuation of the previous letter to the Honorable Secretary of Labor.

Q. Did you have any understanding with them besides the letter, any minor grievances you would take up and adjust with them at that time?

A. There were a few grievances Mr. Horn and the committee said if we could adjust they would go along with that letter of understanding. That meeting was held and those grievances adjusted satisfactorily.

Q. Do you recall in a general way what those grievances were?

A. Oh, I think there were several cases of discipline.

The Court:
Of what?

The Witness:
Discipline.

The Court:
Discipline?

The Witness:

Yes, sir, and probably a rate or two they asked to be adjusted.

Q. I will ask you whether or not at that meeting there was any discussion on the part of the union, or any insistance on the part of the union on the half time and half time brought up for discussion at all?

A. Never was.

Q. That matter was never brought up for discussion by the Union?

A. No, sir.

Q. The only times it was mentioned were these three times?

Mr. Harris:

We think those questions are a little leading. As a matter of fact it was. Mr. Burr is wrong. It did come up later.

Mr. Burr:

We don't think it was, and we are going through every record we have. If there is anything different we would like to have some reference to it.

The Court:

He is saving time by leading.

Q. Did the men go back to work after the strike?

A. Yes, sir.

Q. Did they go back on this 8-hour working place to working place basis?

A. They did after the strike in 1934.

Q. After this letter was made, June 13, 1935, did they continue to work on the 8-hour working place to working place basis?

A. They did.

Q. Now, Mr. Ball, did the letter—the documents you have just identified, the second letter of understanding, dated June 24, 1935, with the Smelters Union—I will ask you if the next negotiations for a new agreement—for an agreement that you had with the Smelters Union occurred sometime in the summer of 1936?

A. Yes, sir; I believe at that time there was another proposal submitted to the management.

Q. Now, before that proposal was submitted, which I will show you in a few minutes, did you have any meetings with this same committee representing the Smelters Union in reference to the proposal of the company to put in operation the incentive plan you told us about a while ago?

A. Sometime in March, 1936, we had a meeting with the committee at which time I told them we had been very seriously considering an incentive plan, and that in due course we would present that plan to the committee.

Mr. Burr:

Will you mark this one, please, sir, the next Exhibit?

The Clerk:

Yes, sir, it will be number 10,—T. C. I. Number 10.

(Thereupon a letter dated May 26, 1936, addressed to Mr. E. M. Ball, and signed A. E. Horn, to which is attached a document entitled, "Working agreement between the Tennessee Coal, Iron & Railroad Company and their employees, members of the International Union of Mine, Mill & Smelter Workers," was marked T. C. I. Exhibit No. 10.)

Q. Now, was there a strike at the ore mines of the company in 1936?

A. There was. It took effect on May 31, 1936.

Q. May 31, 1936?

A. Yes, sir.

Q. Will you tell us how long that strike closed down the operations of the Company, if it did close them down?

A. Until August 19, 1936.

Q. I am showing you T. C. I. Exhibit Number 10, which is a letter addressed to you, Mr. E. M. Ball, General Superintendent, mines and quarries, and has attached to it a document described as, "Working agreement between the Tennessee Coal, Iron & Railroad Company and their employed, members of the International Union of Mine, Mill & Smelter Workers."

Was that letter presented to you, Mr. Ball?

A. It was.

Q. Is this agreement attached to it the agreement that was presented along with the letter?

A. Yes, sir.

Mr. Burr:

Now, we offer this letter, and, of course, I would like the record to show,—I don't know whether I have done it each time,—I do formally offer in evidence all the exhibits that have been admitted by Your Honor so there can't be any question about that.

Mr. Harris:

That was my understanding, that you had offered them and we had objected, and they had been admitted.

The Court:

That has been my understanding all along.

When did you say the strike ended? August 21st?

The Witness:

August 19th.

Mr. Harris:
Did you say it began May 19th or May 31st?

Mr. Burr:
May 31st.

The Witness:
No, May 31st.

Mr. Harris:
Are you waiting on this exhibit?

Mr. Burr:
Yes, sir, waiting on the paper.

Mr. Harris:
As I understood your question to Mr. Ball and his answer, he testified this was the original that accompanied this letter?

Mr. Burr:
That is right; that is right.

Q. Mr. Ball, you testified a few minutes ago that sometime in March the incentive plan of the company was finally formulated and the Union was given notice you expected to put it into effect?

A. They were given notice we would take up the details with them and discuss it with them in the very near future.

Q. Did you have discussions with them after that time?

A. We did.

Q. Did you have discussions before the strike occurred?

A. Yes, sir.

Q. Without going into the details of those discussions, did the Union decline to work under the incentive plan, the Smelters Union?

A. They did.

Q. And then followed the strike?

A. Yes, sir.

Q. Now, then,—and T. C. I. Exhibit 10 is the letter that was delivered to you by the Union Committee, signed A. E. Horn, President, District 5, International Union of Mine, Mill & Smelter Workers; that is the original letter, is it?

A. Yes, sir.

Q. With the accompanying working agreement?

A. Yes, sir.

Mr. Cooper:

What is the date of that?

Mr. Burr:

May 26, 1935.

Mr. Harris:

1936.

Mr. Burr:

Yes, sir, 1936.

The letter reads as follows:

"On June 24th, 1936, the agreement between your employees, members of the International Union of Mine, Mill & Smelter Workers and the company will expire."

Q. That is the second letter of understanding—

A. Yes, sir.

Q. —you have told us about?

A. Yes, sir.

(Thereupon Mr. Burr read to the Court the remainder of the letter dated May 26, 1936, embraced in T. C. I. Exhibit No. 10.)

Q. Now, I ask your attention to the contract that accompanied that letter and ask you to state whether or not it included the following definition of the workday:

"Maximum hours: An 8-hour day and 5-day week (40 hours per week) shall prevail, exclusive of the 30 minute lunch period, with option to run through without suspension, if agreed to between the company and the mine committee."

Was the union at that time considered not having the lunch period?

A. I believe they had in a request.

Q. "The 8 hour days means 8 hours in or about the mines, at the usual working places for all classes of work, (other than those excepted from this agreement), exclusive of the lunch period, whether they be paid by the day or paid by tonnage."

Was that the clause they submitted themselves at that time?

A. Yes, sir.

Q. You are familiar with this proposed contract?

A. Yes, sir.

Q. That is the only clause that relates to the definition of the day's work in the contract?

A. Correct.

Q. In other words, in this contract, presented on May 26, 1936, the union made no request for any portion of the traveling time?

A. None whatever.

Q. Or that request was the right hours in and about the mines in the usual working place?

A. Correct.

Q. In other words—We can get these dates right now. You have testified previously the first time any suggestion was ever made about any traveling time was on October 19, 1933, when they asked for half and half?

A. Yes, sir.

Q. Or suggested it?

A. Yes, sir.

Q. The next time was on April 13, 1934, when they asked for half and half?

A. Yes, sir.

Q. And the third time on June 13, 1935, when they again suggested half and half?

A. Yes, sir.

Q. I will ask you if those are the only three times and constitute all the times the union has presented any request at all for computation and payment of time including any part of the transportation?

A. Those were the only times.

Q. Those were the only three?

A. Yes, sir.

Q. On this occasion they defined the day's work as defined in this contract?

A. Yes, sir.

Q. That is what they asked for?

A. Yes, sir.

Q. Of course, my questions are all prior to 1941.

A. I understand.

Q. Prior to this controversy arising?

A. I understand.

Q. All right, sir. I will ask you if you will please, sir, examine Tennessee Company's Exhibit Number 11?

Mr. Smith:

Borden, let me get a thing straight in my mind.

Mr. Burr:
Yes, sir.

Mr. Smith:
Which one of the contracts was it you had in there you would pay half the traveling time,—which one of the contracts?

The Witness:
There were three of those proposals.

Mr. Smith:
Did it ever actually go in—

Mr. Burr:
No; proposed contracts.

Mr. Smith:
There were three proposal?

The Witness:
Yes, sir.

Mr. Smith:
But it never actually went into a contract?

The Witness:
No, sir.

Mr. Smith:
But they insisted on that?

The Witness:
It was suggested that it go into a contract.

Mr. Harris:
Suppose you let him go on.

Mr. Burr:
So you may get that in your minds, it was requested three times?

The Witness:
Yes, sir.

The Court:
Never had an agreement on it?

Mr. Burr:
Never an agreement on it.
Q. Did the union insist on it?

Mr. Harris:
That calls for a conclusion.

Mr. Burr:
No, sir,—

The Court:
They proposed it?

Mr. Burr:
They proposed it but never did bring it up in the negotiations following the proposal

The Witness:
That is correct.

Q. I will ask you to examine plaintiff's Exhibit Number 11, and state whether or not that is a copy of the proposed agreement submitted by this same union committee in which they presented to you their objections to the incentive plan?

Mr. Harris:
Could we see it?

Mr. Burr:
Yes, sir. I have got the original of this, Crampton. I will get it for you later so you can check it. It is in a different department.

Mr. Burr:
Mark that the next one for me.

The Clerk:
Number 12.

(Thereupon a document entitled "proposed agreement" was marked T. C. I. Exhibit No. 11, and a document entitled "Tennessee Coal, Iron & Railroad Company, Muscoda Division, Minutes of Meeting held in General Superintendent E. M. Ball's office June 10, 1936," was marked T. C. I. Exhibit No. 12.)

A. Yes, sir, this is—

Mr. Harris:
Let me see—Wait a minute, let me see the original of that.

Mr. Burr:
I told you I would give to you the original later. That is a copy, a correct copy. It is in another department. We haven't taken it out yet.

Q. You know this is a correct copy?
A. Yes, sir.

Mr. Burr:

We will have the original here for the gentlemen to examine.

Q. Now, I will ask you to state whether or not after that was handed to you by the Union Committee you had a meeting with them at which this was discussed?

A. About ten days or two weeks after the strike was callled we had a meeting with them and discussed their answer to that incentive plan.

Q. That answer is this Exhibit Number 11?

A. Yes, sir.

Q. Were there minutes made of that meeting and kept and signed by you and also by B. H. Barksdale as chairman of the Union Committee?

A. Yes, sir.

Q. And are those minutes shown by Plaintiffs' Exhibit Number 12?

A. Yes, sir.

Q. Was Barksdale chairman of the committee of the Union that met with you on that occasion?

A. He was president of the Muscoda Local at that time.

Q. Were the following ones present at that meeting as shown by these minutes of June 10, 1936, as signed by you, and Mr. Barksdale representing the opposing factions:

Those present were Mr. E. M. Ball, General Superintendent, Mr. J. S. Vance, Manager of Industrial Relations, Mr. Ewing Carter, Superintendent, Muscoda, Mr. G. B. Neal, Superintendent, Wenonah, Mr. C. B. Cameron, Superintendent, Ishkooda Mr. M. E. Baird, General Superintendent's Clerk; and the following committee representing the members of the Red Mountain Locals of the International Union of Mine, Mill & Smelter Workers:

Mr. A. E. Horn, President, District 5; Mr. Van Jones, International Representative, Mr. B. H. Barksdale, President, Muscoda Local, Mr. C. J. Daniel, President, Wenonah Local, Mr. M. C. Anderson, President, Ishkooda, Local, Mr. M. E. Adams, Secretary Muscoda Local, Mr. Britt Lemley, Secretary Wenonah Local, Mr. Ed. Sizemore, Secretary, Ishkooda Local, Frank Allen, Vice President, District 5, Bill Baylor, Vice President Muscoda Local, Will Mahan, Vice President Wenonah Local, Elmore Mitchell, Vice President Ishkooda Local."

Were they the ones that were present?

A. Yes, sir.

Q. Now, then, I call your attention to the following paragraph of these minutes in reference to that discussion without reading it all. Let me see if I can find that.

Mr. Burr:

Now, then, Mr. Ball, I call your attention to the proposal of the Union, Plaintiff's Exhibit 11, where the union proposed that "day's work to consist of 8 hours, 8:30 A. M. to 2:30 P. M., and 6:30 P. M. to 2:30 A. M., with no time off for lunch." That was the proposal made?

A. Yes, sir.

Q. In reference to that I call your attention to and ask you if this is what happened at the meeting discussing that, reading back a little bit to get the connection.

"The next paragraph requires no answer. In the following paragraph: 'No drag scrape or section crew except during emergency be permitted to start before usual working time and must cease work at the regular quitting time.'

"Our time studies show that the men do not do that now. When we check men in the mines we expect them to give a full 8 hours work.

The next paragraph states:

"'Days work to consist of 8 hours, 6:30 A. M., to 2:30 P. M., and 6:30 P. M., to 2:30 A. M., with no time off for lunch.'"

That is the union's proposal?

A. Yes, sir.

Q. "Our answer to that is no. Our men go in the mines about 6:05 A. M., and they get to their working places about 6:45 A. M. Lunch is from 11:45 to 12:15, however, if the men want their lunch hour at some other time that is o. k. Quitting time is 3:15. That is 8 hours face to face. Men that are working all day need their lunch period. They get up early and to keep in the best physical condition these hours should remain as they are. This also applies to the service men. Are there any comments?"

And Mr. Horn replied to that: "That is clear."

A. That is correct.—That—

Q. Is that or not the same schedule of operations you have been working on for many years previous to that?

A. That is the same schedule we had worked on.

Q. That you testified about yesterday?

A. Yes, sir.

Mr. Lipscomb:

What are the dates of this exhibit?

Mr. Burr:

June 10, 19—

The Court:

What is that exhibit?

Mr. Burr:
It is the signed minutes—

The Court:
What is the Exhibit Number?

Mr. Burr:
The minutes are Exhibit Number 12, and the proposal the minutes refer to is Exhibit Number 11.

Q. All right, sir. Now, I will ask you if in that same meeting, as shown by these minutes signed by the two contracting parties, if—

Mr. Harris:
If the Court please, he says by contracting parties—

Mr. Burr:
Well, I mean by the negotiating parties. I didn't mean to—There was no contract reached at that particular time.

Q. If, in discussing this item in the union's proposal you didn't read from that proposal this:

"Your employees feel that Paragraph 1 should read, 'A fair day's work'. This is the daily production of an average section crew working in an average heading at the average rate of skilled miners with average allowances for personal necessities, fatigue and general mining delays and conditions."

And the reply to that:

"That is unnecessary, as the meaning is the same as in the incentive plan."

A. Yes, that was contained in those minutes.

Q. All right, sir. Now, at any time during that discussion or at any other time since June 13, 1935, has this union or any member of it or any members of it ever discussed in any way or proposed in any way that they be paid for traveling time in the mines?

A. They have not.

Mr. Burr:

Here is a copy of the minutes. We would like for you to check those for us.

Mr. Harris:

Of course, I would like to have—I didn't understand the originals would be taken out before we started cross examination.

Mr. Burr:

That is all right. We will leave them here. We will substitute them later.

Mr. Harris:

This is Exhibit Number 12, and that includes both the minutes and the proposal?

Mr. Burr:

No, the proposal is Number 11.

Q. All right, sir. Now, I believe you said that the strike continued until August 19, 1935?

A. Yes, sir, until August, 1936.

Q. 1936, I mean, of course.

A. Yes, sir.

Q. Without going into the details of it were the mines reopened at that time under—growing out of a conference that occurred between the Government and the Union representatives and Governor Graves?

A. Yes, sir, an understanding known as the Governor's agreement, and they went back to work under that Governor's agreement.

Mr. Burr:
In order that we can have the entire record right straight on through, mark that exhibit.

The Clerk:
Be Number 13.

Mr. Harris:
Governor's agreement?

Mr. Burr:
That is the Governor's Agreement, yes, sir.

The Clerk:
T. C. I. Exhibit Number 13.

(Thereupon a document entitled "Statement Issued to the Press by Governor Graves at 6:00 P. M., August 4, 1936," was marked T. C. I. Exhibit No. 13.)

Q. I will ask you, please, sir, to examine T. C. I. Exhibit Number 13 and state if that is a correct copy of the announcement that was made by the Governor announcing the agreement under which the men went back to work on August 19, 1936?

A. Yes, sir.

Q. All right, sir. Now, when they went back to work did they go back to work under the same practice that you have testified about, that is, computing and paying the men on eight hours a day?

A. Went back on the same basis, eight hours in the working place.

Q. I will ask you if in any of those discussions you attended representing the company the Union at any time brought up or even by—in writing or in any way, any question of being paid for any part of the transportation time?

A. No, sir, they did not.

Q. Was it mentioned at all?

A. Not mentioned as I recall.

Q. And they went back to work on the same basis—

A. Yes, sir.

Q. —and they had worked on since you had been there?

A. Yes, sir.

Q. Now, then, under the Governor's agreement, without going into the details of it, the Union agreed to go back to work and give the incentive plan—

A. A 90-day trial.

Q. A 90-day trial?

A. Yes, sir.

Q. Was there what was commonly called a Governor's hearing which met in September of 1936 and continued until sometime—

A. '37.

Q. Sometime near Christmas, or maybe the early part of 1937?

A. Yes, sir.

Q. Without going into the details of that hearing, it was an extended hearing here at the Court House here in Birmingham?

A. Yes, sir.

Q. In which the publicity committee appointed by the Governor held set meetings?

A. Yes, sir.

Q. Were you a member—

A. Yes, I was a member of the seven-man board.

Q. Was any question ever brought up at that hearing of the transportation time?

A. Not that I remember hearing.

Q. There is a stenographic report, is there not?

A. Yes, sir.

Q. You have no recollection of that question being raised during that hearing?

A. No, sir.

Q. Since that time has the operation of the mines been conducted with the incentive plan in force with such changes as have been made with reference to rates and so forth from time to time down to May 1, 1941?

A. It is in force practically the same way it started. There have been certain changes in rates due to conditions.

Q. And you expect to continue to make those changes?

A. Yes, sir.

Mr. Harris:

What was that question?

Mr. Burr:

Expect to make those changes where there is necessity to make them?

A. Yes, sir.

Q. I will ask you to state whether the next time any question came up between the Smelter's Union and the company in reference to negotiating a contract was in 1938 and finally resulted in the execution of a written contract between the parties?

A. There was a meeting held in New York, and a final meeting in Chicago, at which they agreed to sign a contract, and the final contract was signed in Birmingham.

Mr. Burr:

Your Honor, I think the original of this—Can we have the complaint? I think the original is attached to the complaint, the signed copy.

The Court:
Yes, sir.

Mr. Burr:
If it isn't, we can get the original. Both parties have a copy of this original, and we will get our original from the Industrial Relations Department and they can check it.
That was the contract that was signed—

The Court:
'38?

Mr. Burr:
Yes, sir.

The Court:
What date?

Mr. Harris:
October 6, 1938.

Mr. Smith:
That was after this act went into effect?

The Witness:
Yes, sir.

The Court:
Before.

Mr. Burr:
Just before it went into effect.

Mr Smith:
What date?

The Court:
October 6th.

Mr. Burr:
Did you make it?

The Clerk:
I haven't yet.

Mr. Burr:
All right, sir.

The Clerk:
Be T. C. I. Exhibit Number 14.

(Thereupon a document entitled "Agreement", dated October 6, 1938, and signed Tennessee Coal, Iron & Railroad Company by E. M. Ball, General Superintendent, Ore Mines, and J. F. Vance, Manager of Industrial Relations, and the International Union of Mine, Mill & Smelter Workers by Reid Robinson, Van D. Jones, C. J. McDaniel, E. T. Patterson, J. M. Lemley and Frank Allen, was marked T. C. I. Exhibit Number 14.)

Mr. Burr:
This is the original. I beg Your Honor's pardon.

Mr. Harris:
You had a duplicate on top.

Q. I will ask you, please, sir, to examine T. C. I. Exhibit Number 14, which is dated October 6, 1938, and signed Tennessee Coal, Iron & Railroad Company, by E. M. Ball, General Superintendent of Ore Mines, and J. F. Vance, Manager of Industrial Relations, and International Union of Mine, Mill & Smelter Workers, by Reid Robin-

son, Van D. Jones, C. J. McDaniel, E. T. Patterson, J. M. Lemley and Frank Allen.

Is that the original contract—

A. It is.

Q. That was made at the time?

A. It is.

Q. Is Reid Robinson, who signed the first name for the Smelter's Union,—is he the national president of this organization?

A. He is.

Q. Was at that time?

A. Was at that time.

Q. Now, I will ask you if in the discussion about this contract, so far as you have any knowledge of, any question was ever raised by Mr. Robinson or anyone else that the men should be paid for the traveling time or any part of the traveling time?

A. The question was not raised.

Q. Now, I call your attention to Section 4 of this contract, which reads as follows, quoting the part that is applicable here:

"Eight hours shall constitute a day's work, and forty hours shall constitute a week's work. Time and one half shall be paid for all over time in excess of eight hours in any one day, or for all over time in excess of forty hours in any one week."

Now, had that exactly same practice and understanding been in effect for a good many years previous to that?

A. The practice had been in effect?

Q. And for how many years? I believe you told us this morning?

A. A great many years.

Q. This definition follows that:

"The eight-hour day means eight hours of work in or about the mines at the usual working places for all classes of labor, exclusive of the lunch period, whether they be paid by the day or be paid on the tonnage basis."

Is that the practice that has been in effect since you have been connected with the industry?

A. Yes, sir.

Q. Is that the practice the union and these officers signed this contract under?

A. Yes, sir.

Q. That is found in this contract?

A. Yes, sir.

Q. And after this contract was made was that the practice that continued being observed?

A. Yes, sir.

Q. The men's time being computed and paid on this basis, and the men signing receipts four times a month?

A. Two or four times a month.

Q. Now, Mr. Ball, the one I have just showed you, which was plaintiff's Exhibit 14, the signed contract between the Union—the Smelters Union and the company, was that the last contract that was executed between the Union and the company up to May 1, 1941?

A. It was.

Q. Now, there has been one made subsequent to that time?

A. Yes, sir.

Mr. Burr:

Now, Your Honor, we have a contract here made subsequent to that time, subsequent to May 1st. I don't offer it, but if the Court or these gentlemen want it, we have no objection to it whenever they want it. In other words, I am confining my case to the conditions that existed on May 1, 1941, at the present time.

Would you gentlemen—

Mr. Harris:
I imagine we have a copy of it.

The Court:
The last contract prior to May 1941, was October—

Mr. Harris:
That is the only contract.

Mr. Burr:
That is the only contract ever negotiated.

Mr. Lipscomb:
That is the only contract they ever signed.

Mr. Burr:
That is right, yes, sir.

Q. Now, let's, as rapidly as we can, Mr. Ball, run over the relationships that have existed between the other union and the company, the American—which has the present name of Red Ore Miners Union, an unincorporated association affiliated with the American Federation of Labor.

Can you tell the Court what labor organization that present union absorbed or succeeded to?

A. They absorbed the union known as the Brotherhood of Captive Mine Workers, or—I believe that was the correct name,—Brotherhood of Captive Mine Workers.

Q. Can you tell us when that—the Brotherhood, I will refer to it for the present,—when the Brotherhood organized?

A. In the fall of the year 1934.

Q. Did a committee representing the Brotherhood call on you in September of 1934?

A. As I remember, they did.

Q. Did they at any time, or has that particular organization ever requested or suggested the payment of any portion of transportation time?

A. I do not recollect of this union ever making a request for traveling time.

Mr. Burr:

Will you mark this exhibit please?

The Clerk:

T. C. I. Exhibit Number 15.

(A document dated at Birmingham, Alabama, June 26, 1935, and addressed to Mr. Luke Cushman, Brotherhood of Mine Workers of Captive Mines, Muscoda, Alabama, Mr. Louis Harmon, President, Brotherhood of Mine Workers of Captive Mines, Wenonah, Alabama, and Mr. Tom Brown, President, Brotherhood of Mine Workers of Captive Mines, Ishkooda, Alabama, and signed J. L. Perry, President, was marked T. C. I. Exhibit Number 15.)

Mr. Smith:

If Your Honor please, before you go into that I want to renew my objections to all those other contracts as not affecting my party.

Now, he seems to be starting on the party we represent.

The Court:

Overrule the objection.

Mr. Smith:

We except.

Q. Mr. Ball, did you have a meeting with the committee representing the Brotherhood on June 24, 1935?

A. I think I did, yes, sir. There would be minutes made if I had one.

Mr. Burr:
Mark that, please.

The Clerk:
T. C. I. Exhibit Number 16.

(Thereupon a document entitled, "Tennessee Coal, Iron & Railroad Company, Muscoda Division, Minutes of Meeting Held in General Superintendent E. M. Ball's Office, June 24, 1935," was marked T. C. I. Exhibit No. 16.)

The Court:
Mr. Burr, this is the affiliate of the American Federation of Labor?

Mr. Burr:
Yes, sir.

The Court:
What do you call it now? Captive Miners?

Mr. Burr:
No, sir. It is the Red Ore Miners. It was the Brotherhood of Captive Miners.

Mr. Smith:
Was that what was called the company union too?

Mr. Burr:
Some people called it that.

Mr. Lipscomb:
The C. I. O. disclaims any identity with that union.

The Court:
I am separating them.

Mr. Burr:
I have separated them also, but that union is entitled to representation here the same as the Smelters Union. I don't know who represents the most men except what I have heard.

Q. I show you Exhibit Number 16 and ask you if that is a correct copy of the minutes made at that time of the meeting held with that union with reference to this matter embraced in those—

A. It is.

Q. Now, following that meeting I will ask you to state whether or not the—that union agreed to the letter of understanding similar to the one that was written and accepted by the Smelters Union?

A. They agreed to the second letter of understanding.

Q. Second letter of understanding?

A. Yes, sir.

Q. That is what I mean.

A. Yes, sir.

Q. Is that Tennessee Company's Exhibit Number 15—is that a copy of the letter that was written and accepted by the union?

A. It is.

Q. Signed by Mr. Perry as President?

A. It is.

Mr. Burr:
You ought not to forget your client.

Mr. Smith:
That was yours at that time.

Mr. Burr:
That was the Brotherhood of Miners of Captive Mines, of Alabama.

The Court:
That is 16?

Mr. Burr:
The minutes referring to it is 16, and the letter is 15.

Mr. Quinn:
They didn't become affiliated with the American Federation of Labor until 1937.

Mr. Burr:
Yes, sir. What we propose to show and will show that no employee of the company during that time ever mentioned, except what is shown here, traveling time.

The Court:
You show the minutes of the meeting, whatever they will show?

Mr. Burr:
Yes, sir.

Mr. Smith:
We object to that up to the time this defendant A. F. of L. came into being.

The Court:
I overrule the objection.

Mr. Smith:
We except.

The Court:
I am letting these in for whatever bearing they may have.

Mr. Burr:
Yes, sir.

Q. All right, sir. Now, did you have a meeting with representatives of the Brotherhood Union, or, as Judge Smith prefers to call it, the company union,—I will take his designation for it for the purpose of these questions,—

Mr. Smith:
I am not taking either one. I am representing the A. F. of L.

Mr. Burr:
I don't—

Mr. Smith:
We except.

Q. Did you have a meeting with them with reference to the incentive system when they went into operation?
A. I did.
Q. Was that previous to the strike?
A. Yes, sir, sometimes probably two weeks or more before the strike of 1936.
Q. Did that union agree to work under the incentive plan?
A. They did.
Q. Did they accept it for trial?
A. Yes, sir.
Q. That was the strike that began on the 31st of May, 1936, and closed on August 19, 1936?
A. That is correct.

Mr. Burr:
Mark this, please.

The Clerk:

T. C. I. Exhibit Number 17.

(Thereupon a document dated May 6, 1937, addressed to Mr. E. M. Ball, General Superintendent, Ore Mines, Tennessee Coal, Iron & Railroad Company, Muscoda, was marked T. C. I. Exhibit 17, and a proposed form of contract between Tennessee Coal, Iron & Railroad Company and the Brotherhood of Mine Workers of Captive Mines was marked T. C. I. Exhibit 17-A, and a document entitled "Tennessee Coal, Iron & Railroad Company, Muscoda Division, minutes of Meeting Held in General Superintendent E. M. Ball's Office May 8, 1937," was marked T. C. I. Exhibit 17-B.)

Mr. Smith:

Mr. Clerk, just as a matter of convenience, will you keep those as pinned together for a matter of convenience with reference—

The Clerk:

I am clipping the entire group as they come in.

Q. Mr. Ball, I will ask you, please, sir, to examine T. C. I. Exhibit Number 17 which is the first—the first page of the Exhibit is a letter dated May 6, 1937, directed to you as general superintendent, ore mines of the Tennessee Coal, Iron & Railroad Company, reading as follows:

"As you know, the employees of the three Red Ore Divisions, viz., Muscoda, Wenonah and Ishkooda, are now working under an agreement between the Brotherhood of Mine Workers of Captive Mines and the Company contained in a letter from Mr. Perry and minutes of meetings between the management and the Brotherhood Com-

mittee. It is the desire of these employees, more than 75 percent of whom are members of the Brotherhood, to have executed a formal agreement, signed by the management of the Tennessee Coal, Iron & Railroad Company and the duly chosen representatives of the Brotherhood, and you will find attached hereto proposed agreement, with a request for a meeting of the committee with the management at the earliest convenient date.

Is that the proposed agreement that was attached?

A. Yes, sir.

Q. And is the next paper attached there a correct copy of the minutes of the meeting that was held to discuss that matter signed by—

A. They are—

Q. —E. A. Best, who was the representative of the union for the committee, and by you, the original minutes?

A. Yes, sir, these are the original minutes.

Q. Now, for the benefit of the Court, in that contract or proposal is the same basis—

Mr. Smith:

Just who is that contract signed by?

Mr. Burr:

It wasn't signed by anyone. It was presented by the Brotherhood for consideration.

Mr. Smith:

We object if it is not signed by anybody.

The Court:

Overruled.

Mr. Smith:

Except.

Mr. Burr:

Will you mark this one, please, sir?

The Clerk:

T. C. I. Exhibit 18.

(Thereupon a document entitled "Agreement" and dated May 31, 1937, signed Tennessee Coal, Iron & Railroad Company by E. M. Ball, General Superintendent, Ore Mine, and by J. F. Vance, Manager of Industrial Relations, and representatives of those employees who are members of the Brotherhood of Mine Workers of Captive Mines, Ore Mines Division; by Stanley T. Hudnall, Chairman, Executive Committee, Brotherhood of Mine Workers of Captive Mines, Ore Mines Division, E. A. Best, Secretary, T. J. Massey, Committeeman, Muscoda, Paul Dumas, Committeeman, Muscoda, J. W. Wilson, Committeeman, Wenonah, John McGhee, Committeeman, Wenonah, J. S. Pitts, Committeeman, Ishkooda, and Julian Hicks, Committeeman, Ishkooda, was marked T. C. I. Exhibit No. 18.)

Q. I wish you would please, sir, Exhibit T. C. I. Exhibit Number 18, which purports to be an agreement, and is signed on May 31, 1938, by yourself as General Superintendent of Mines and J. F. Vance, Manager of Industrial Relations, and by the committee and the employees who are members of the Brotherhood by Stanley T. Hudnall, Chairman, Executive Committee, Brotherhood of Mine Workers of Captive Mines, Ore Mines Division, E. A. Best, Secretary, T. J. Massey, Committeeman Muscoda, Paul Dumas, Committeeman, Muscoda, J. W. Wilson, Committeeman, Wenonah, John McGhee, Committeeman, Wenonah, J. S. Pitts, Committeeman, Ishkooda, Julian Hicks, Committeeman, Ishkooda.

Is that the first written agreement that was finally executed between this labor organization and the company?

A. No, sir. This is the second one. The first one was signed in 1937, I believe.

Q. This is 1937. I made a mistake. It expires—

The Court:

What is the date?

Mr. Burr:

It was executed on the 31st day of May, 1937.

A. Yes, sir, that is the first one.

Q. It expires on May 31, 1938?

A. Yes, sir.

Q. On the execution of this contract between the employees and their representatives and—

Mr. Smith:

Who was that between?

The Court:

The Brotherhood.

Mr. Burr:

The Brotherhood.

The Court:

Proceed.

Mr. Burr:

Read the question.

(Thereupon the reporter read the question last propounded as above recorded.)

Mr. Burr:

Change it.

Q. During the negotiations of this contract, T. C. I. Exhibit 18, did the representatives of the employees or the employees present the question or raise in any way the contention they ought to be paid for travel time and should not be on a face to face basis?

A. They did not raise the question.

Q. And the contract in Section 4 contains the definition reading:

"The 8-hour day means eight hours of work in or about the mines at the usual working places for all classes of labor"?

A. It does contain that clause.

Q. That is the same system that had been in force during all the years, you testified?

A. It is.

Q. All right, sir.

Mr. Burr:

Will you mark this one, please, sir? This is the next one.

The Clerk:

T. C. I. Exhibit Number 19.

(Thereupon a document entitled "Agreement", and dated June 15, 1938, and signed Tennessee Coal, Iron & Railroad Company by E. M. Ball, General Superintendent, Ore Mines, and by J. F. Vance, Manager of Industrial Relations, and representatives of those employees who are members of the Brotherhood of Mine Workers of Captive Mines, Ore Mines Division, by J. W. Wilson,

Chairman, Executive Committee, Brotherhood of Mine Workers of Captive Mines, Ore Mines Division, E. A. Best, Secretary, T. J. Massey, Committeeman, Muscoda, I. V. Robinson, Committeeman, Muscoda, W. R. Maxwell, Committeeman, Wenonah, Stephen Jackson, Committeeman, Wenonah, James A. Bailey, Committeeman, Ishkooda, Hayes Judkins, Sr., Committeeman, Ishkooda, was marked T. C. I. Exhibit Number 19.)

Q. I now show you, Mr. Ball, T. C. I. Exhibit Number 19, which is dated the 15th day of June, 1938, between the Tennessee Company and the Brotherhood of Mine Workers of Captive Mines, signed by J. W. Wilson, Chairman of Executive Committee, E. A. Best, Secretary, by Massey, Robinson, Maxwell, Jackson, Bailey and Hayes Judkins, Committeeman of the different locals, and by yourself and Mr. Vance representing the company.

Is that the next contract entered into between this labor organization and the company?

A. The second contract with the Brotherhood.

The Court:

What is the Brotherhood called? What is the name of it?

Mr. Burr:

It is the Brotherhood of Mine Workers of Captive Mines.

Q. In the negotiation of this contract was there any request or suggestion or the suggestion ever brought up in any way that the existing custom or practice of paying on the working place to working place basis should be changed and transportation included in that workday.

A. It was not discussed.

Q. I believe you said as far as this organization was concerned, the Brotherhood, the American Federation who succeeded to the Brotherhood, that had never been raised by them at any time?

A. I do not remember them ever raising that question.

Q. Until this controversy arose?

A. Yes, sir.

Q. All right, sir.

Mr. Burr:

Have you got the next one?

Mr. Patterson:

Yes, sir.

Mr. Burr:

All right, sir.

Q. Now, after the execution of Defendant's Exhibit 19, T. C. I. Exhibit Number 19, the contract about which you have just testified, I will ask you if shortly after that the Brotherhood of Mine Workers was succeeded by the Red Ore Miners Union affiliated with the American Federation of Labor?

A. Sometime during 1939. I believe in the spring.

Q. Did the American Federation of Labor Union present to you the claim they had succeeded to the other union?

A. Yes, sir, we had a notification to that effect.

Q. Notification to that effect?

A. Yes, sir.

Mr. Burr:

All right, sir—

The Clerk:
This will be T. C. I. Exhibit Number 20.

(Thereupon a document dated December 23, 1940, and signed Tennessee Coal, Iron & Railroad Company, by W. J. Kelly, Acting Manager of Industrial Relations, and Red Ore Miners Union, by J. W. Wilson, Chairman, Executive Committee, to which was attached a document entitled "Agreement", dated June 29, 1913, between Tennessee Coal, Iron & Railroad Company and the Red Ore Miners Union, was marked T. C. I. Exhibit No. 20.)

Q. Following that I will ask you if this contract was executed, identified as T. C. I. Exhibit Number 20, signed, Red Ore Miners Union, by J. W. Wilson, Chairman, Executive Committee, and W. J. Kelly, Acting Manager of Industrial Relations, with the contract which was extended referred to—attached to the letter,—agreement—

Mr. Smith:
What is the date of that contract, Mr. Burr?

Mr. Burr:
December 23, 1940, and it reads as follows, so Your Honor can catch the organization:

"It is agreed that the terms and conditions of the agreement between the Tennessee Coal, Iron & Railroad Company and the Red Ore Miners Union, Affiliated with the American Federation of Labor, entered into on June 29, 1939, and concerning which written notice for the commencement of a conference for the purpose of negotiating the terms and conditions of a change of such agreement was given by the Union to the Company on December 4, 1940, and no agreement having been reached during the period of negotiations, the agreement dated

June 29, 1939, is extended in full force and effect to and including January 31, 1941."

The agreement extended is the one which was identified.

The Court:
June 29, 1939.

Mr. Burr:
Yes, sir. That is the last one with this particular company, or is another one, Pat?

The Witness:
This one is the last one.

Mr. Smith:
Who is that signed by?

Mr. Burr:
Red Ore Miners Union.

Mr. Smith:
What?

Mr. Burr:
Red Ore Miners Union, J. W. Wilson, Chairman of the Executive Committee.

Mr. Smith:
Is that an A. F. of L. Affiliate?

Mr. Burr:
The one you appear for.

Mr. Smith:
You said something about Red Ore.

Mr. Quinn:
They got rid of the company union.

Mr. Smith:
I am not familiar with the Red Ore Union.

Mr. Burr:
Let him see it.

Mr. Smith:
I will take your word for it.

Mr. Burr:
I think Jack is the head of your Executive Committee. That is all right if you don't want to accept it.

Mr. Smith:
I didn't recognize the Red Ore Union of that name.

Mr. Burr:
That union, the Red Ore Union, is one of the defendants in this case?

The Witness:
Yes, sir, affiliated with the American Federation of Labor.

Mr. Burr:
Judge, that concludes all the—Just a minute.

Q. Now, Mr. Ball, have you given here all the written documents and contracts and minutes that in any way relate to either proposals for contracts or contracts actually executed between either of these unions or any locals constituting them?

A. Yes, sir, I have presented all the—

Q. And have you testified to all the times and the character of the occurrences where the question of payment for any part of the time spent in transportation was brought up by filing written proposals? Have you testified to all of them?

A. I have so testified.

Q. I will ask you this: Has there ever been at any time a suggestion on the part of any union or any representative of any union or any employee of yours previous to the beginning of this controversy that the men should be paid on the basis of portal to portal?

A. No, sir.

Q. The only suggestion that in any way approached that—

Mr. Harris:

That is leading.

The Court:

Don't lead him, Mr. Burr.

Mr. Burr:

All right, sir.

Q. I will ask you whether or not the three instances you have mentioned, dated October, 1933, and April 13, 1934, and June 13, 1935, whether they are the only times or occasions upon which or in which any part of transportation time being a part of the day's work was suggested or intimated by any of these unions or locals or employees?

Mr. Harris:

That is the third time he has asked that question.

The Court:

I think he has asked that question.

Mr. Burr:

I wanted to be sure.

The Court:

He may answer it, though. Go ahead.

A. Those are the only three times.

Q. Mr. Ball, during this period of time, since 1933, the time you said the Smelters Union was organized, I will ask you did you have regular conferences with their committees to consider complaints for their members or complaints for their organizations?

A. They had meetings with the local superintendents and meetings with the general superintendent.

Q. And would those meetings be attended by the management and committees representing these unions?

A. They would be.

Q. Were minutes kept of those meetings?

A. There would be.

Q. Have you had search—Have you had those minutes read through from cover to cover to determine whether or not at any of those meetings any complaint was ever made about not paying for transportation time or changing the hours of work?

Mr. Harris:

We—

The Court:

I think that would call for entirely hearsay testimony.

Mr. Burr:

All right. We will have to present the minutes and let them read them. We will do that later. I will state minutes were kept of those meetings. I was just trying to save time.

Mr. Harris:

We haven't thrown all of the rules of evidence away to save time.

Mr. Burr:

If they object on that basis we will do it that way.

The Court:

I think that is objectionable.

Mr. Burr:

All right. I will have a witness here who will have the minutes and has read them. I think the minutes are signed by both parties.

The Court:

By representatives?

Mr. Burr:

Yes, sir. Mark this one, please.

The Clerk:

T. C. I. Exhibit Number 21.

Mr. Burr:

Yes, sir.

(Thereupon a document headed "Bessemer, Alabama, October 5, 1940," and entitled, "In re: Ishkooda Local Number 153, of International Union of Mine, Mill & Smelter Workers, District Number 5, an affiliate of the Bessemer Smelters Council," and signed by E. A. Sisemore as President of Local Number ... of I. U. M. M. & S. W., and attested by T. J. Sizemore, as Recording Secretary, was marked T. C. I. Exhibit Number 21.)

Q. Mr. Ball, I now show you T. C. I. Exhibit Number 21, which is dated Bessemer, Alabama, October 5, 1940, and purports to be signed by E. A. Sisemore as President of Local Number blank of I. U. M. M. and S. W., attested T. J. Sizemore, as Recording Secretary, with the seal of the local on it.

I will ask you if that is the original that the company received when this particular local presented the matters embraced in that particular resolution with request or demand they be paid this transportation time?

A. Yes, this is the one from the Ishkooda Local.

Q. I will ask you to state whether or not similar resolutions, exactly like that, were presented from the other two locals?

A. They were.

Q. Muscoda and Wenonah?

A. They were.

Mr. Burr:

That, if Your Honor please, is the resolution referred to in the Bill of Complaint in which they present this controversy.

Mr. Smith:

What date is that?

Mr. Burr:

October 5, 1940.

Crampton, off the record, I have the others, but I don't think it is necessary to put them in.

Mr. Harris:

I don't either.

Mr. Burr:

They are similar.

Mr. Harris:
These gentlemen say they want them in.

Mr. Burr:
What gentlemen; the government?

Mr. Harris:
The government.

Mr. Burr:
Will copies be sufficient?

Mr. Brodie:
Yes, sir.

Mr. Burr:
We will give you copies now. Here is Muscoda. I will give you the Wenonah one later when we can find it.

The Clerk:
Do you want that marked as an exhibit?

Mr. Burr:
No, I am just giving them copies.

Mr. Lispcomb:
Borden, did you make a statement that was received in 1941? I think the record—

Mr. Burr:
1940.

The Court:
October 5, 1940.
Is that all?

Mr. Burr:

Will Your Honor give me just a minute? I think I am through with Mr. Ball.

The Court:

We will take about a three minute recess.

(Thereupon proceedings were in recess from 11:35 A. M. to 11:50 A. M., following which proceedings were resumed as follows:).

The Court:

Did you have some other questions, Mr. Burr?

Mr. Burr:

I, think, if Your Honor please,—if there is something I have overlooked, I am sure Your Honor will give me an opportunity later.

The Court:

I will.

Mr. Burr:

I think this covers what we want to ask him now.

The Court:

I was just wondering whether to interrupt the cross examination or not.

Mr. Harris:

Well, I have this problem, Judge: It is getting pretty close to adjournment. I have this situation: This Court has adjourned so the Court and lawyers can go to the Bar Association meeting, and I have a case set in Police Court on the 11th. I don't know whether that Judge is going to let me out or not. The only time I can go

to see him to see if he is going to let me out is during the noon hour.

The Court:

Tell him we are all going down.

Mr. Harris:

If Your Honor will give me an extra ten minutes—

The Court:

I am going to give you until a quarter to two. We will adjourn until then.

(Whereupon, at 11:51 A. M., July 9, 1941, a recess was had until 1:45 P. M. of the same day.)

After Recess.

1:45 p. m.

877 E. M. BALL thereupon resumed the stand, and having been previously sworn, testified further as follows:

Cross Examination.

Mr. Harris:

Judge, there is one question I don't think these gentlemen got clear as to those resolutions from those other companies, and in order to clear the situation you were introducing the resolution from each local, but you didn't have the originals but you were giving them copies.

Mr. Burr:

Each Division.

Mr. Harris:
Each Division of the company.

Mr. Burr:
That is right.

The Clerk:
I haven't but one copy. I have a copy of the Ishkooda resolution.

Mr. Burr:
That is the only one offered in evidence, and the proof shown they were exactly the same, and these gentlemen wanted copies and I gave them to them.

Mr. Harris:
And you introduced the copies for each division?

Mr. Burr:
No, I don't see any sense in offering them. I proved they were similar and introduced one.

Mr. Harris:
I wonder if the Court reporters have copies the little diagram on the board.

The Court:
I think it should be done.

Mr. Harris:
It maybe I will want to use the board.

The Court:
You can switch it around and use the other side.

(By Mr. Harris):

Q. Mr. Ball, is the Tennessee Coal, Iron & Railroad Company a wholly owned subsidiary of the United States Steel Corporation?

Mr. Burr:

We want—

A. It is.

Mr. Burr:

—to object to that. We don't think it has any relevancy in this case at all.

The Court:

Overruled.

Q. What is the answer?

A. It is a subsidiary of the United States Steel Corporation.

Q. Are the policies of the Tennessee Coal, Iron & Railroad Company, the labor policies of that corporation determined by the officers here in Birmingham independent of the officers of the United States Steel Corporation or determined after consultation with the officers of the United States Steel Corporation?

Mr. Burr:

Same objection to that question.

The Court:

Overruled.

A. I could not answer that question. I only get my orders from the local management.

Q. Have you had anything to do with the formulation of the policies of the Tennessee Coal, Iron & Railroad

Company with reference to its labor policies or its wage policies since you have been connected with them?

A. None whatever.

Q. Who is the policy committee of the Tennessee Coal, Iron & Railroad Company?

A. I can't answer that question. I can tell you who the executive officers are.

Q. Well, you stated this morning that you referred a question to the management?

A. Yes, sir.

Q. Whom did you mean when you said management?

A. My superior officer, the vice president in charge of production of raw materials.

Q. Who was that man?

A. Mr. C. E. Abbott.

Q. You got your instructions from him as to what you were to do as general superintendent?

A. Yes, sir; I work for Mr. Abbott as general superintendent.

Q. You don't get instructions direct from the president of the corporation?

A. No, sir. We don't do business that way.

Q. You use a military organization scheme, do you?—

A. You do not—

Q. —each communication comes down from the head man of that department, through regular departmental channels?

A. Exactly.

Q. And the men in one department wouldn't cut across to give orders in your department, but if they had anything to take up in your department, it would go up to the head of their department and they would contact the head of your department, and it would come back down to you?

A. That is correct, sir.

Q. And the times and occasions when the labor policies of the T. C. I. were determined are matters of which you have no personal knowledge whatsoever?

A. No, I do not.

Q. Were you called in for advice or consultation by your superior, Mr. Abbott, with reference to the labor policies of your company?

A. I was called in and asked questions on local conditions as reflected in the operations which I was in charge of.

Q. Now, as general superintendent, do you mean that you are general superintendent of the ore mining operations or all the operations of every kind and character of the Tennessee Company?

A. I am general superintendent of the eight ore mines, the one limestone mine and one dolomite quarry.

Q. But you have nothing to do with the furances, the pig iron furnaces or the steel furnaces, the blast furnaces, the rolling mills, sheet mills, things of that sort?

A. None whatever.

Q. The mining of iron ore in the Birmingham District has undergone considerable changes since you first came here in 1902, hasn't it?

A. It has.

Q. As I understand it, when these ore deposits were first discovered in this district, the so-called hard ore was not mined at all; is that correct?

A. In the early days the first mining was what was known as outcrop mining, in which the ore seam was mined approximately for a distance of several hundred feet down from the outcrop,—I would say an average of 300 feet,—where that ore had been weathered and leached out by underground water, the lime being dissolved, and that was known as soft ore, or semi-hard ore.

Q. So that when, in the early days, they mined that soft ore there really wasn't any engineering problem without ventilation to speak of, was there?

A. None when you are that close to the surface.

Q. And in the early days there was no problem about men going from the entry to the face, was there?

A. None whatever. There were generally well established manways parallel to the main slope,—usually walkways.

Q. Now, the mountain out of which you mine—all of your mines are on one mountain, aren't they?

A. Yes, sir.

Q. Approximately how high above sea level is the crest of that mountain, on an average?

A. The highest point on Red Mountain is at our Number 13 mine, which 492 feet above the Gulf of Mexico.

Q. How high is the crest of the mountain above the level of the valley?

A. Oh, approximately—in some places—it varies,—three or four hundred feet, I would say.

Q. In other words, the sea level of the valley would be five or six hundred feet, and the sea level of the crest of the mountain would be nine hundred and some odd feet?

A. Nine hundred and forty-two feet, yes, sir.

Q. Does that mountain run northeast and southwest, or how does it run?

A. Northeast and southwest on a general trend.

Q. Could you give us the compass bearing; it is almost due northeast and southwest?

A. Yes, just about. I don't remember just what the bearings are, but approximately northeast and southwest.

Q. So, your entries to the ore body all begin on one side of that mountain, don't they?

A. Begin on the outcrop side where the ore outcrops to the surface.

Q. That outcrop side is the side towards the City of Birmingham, Jones Valley?

A. Yes, sir, in Jones Valley.

Q. Birmingham is in Jones Valley and the other side of the mountain is called Shades Valley?

A. Yes, sir, that is right.

Q. Through some geological upheaval, the mountain was formed and these ore deposits were thrown up or broken off or stopped on the Jones Valley side of the mountain, weren't they?

A. No, sir, they were not stopped. The ore was originally laid down,—The mud was the floor of a historic sea which was a part of the Gulf of Mexico. It was bounded on the east by the Allegheny mountains and on the west by the mountains of the California coast. This iron ore was laid down under water, and as ages went on there was a gradual upheaval, and where this valley is today there was a top of the mountain, but due to erosion through the ages the ore on this side has disappeared due to erosion and natural causes, leaving the scarf or outcrop of the Red Ore beyond Red Mountain.

Q. So that if you started from the south with your ore bed and traced it in a northern or northeastern direction, you would come to the end of the ore bed at Red Mountain?

A. The southwest—There is ore below the Raimund Mine of the Republic people, and as far southwest as what is known as Sparks Gap, and the ore runs all the way north of Birmingham to the other side of what is known as Ruffner Mine, and the ledges or similar ridges along the mountain at Chattanooga, Tennessee, contain some red ore.

Q. In mining this ore do you have just one seam in these ore beds or do you have three or four different seams?

A. We have one seam, but you take the Birmingham end, and there is what is called two benches, the upper bench and the lower bench, which is divided by just a

smear, you might say, as thick as that blotter, of shale. As we go towards the southwest end, towards Bessemer, that shale parting increases until at the Wenonah Division it is about 18 inches thick, and as we get towards Bessemer, the Muscoda Division, that bottom seam disappears and the upper bench of that ore is the only one that is mineable.

Q. Now is that called the big seam; is that the name of this—

A. The big seam is the seam on the north end.

Q. What about the Ida seam and the Hickory Nut seam?

A. The Ida seam occurs about forty feet below the Red Ore seam.

Q. What is the Hickory Nut seam?

A. The Hickory Nut seam is a seam that outcrops a little above the Red Ore seam, and is plainly shown at our Ishkooda Division where it outcrops there.

It is called the Hickory Nut seam, because when it was in the sea the fossils laid down in the residuary deposits looked very much like a hickory nut. It is not a hickory nut; it is a fossil.

Q. So the seams are in the same geographical area; it is not true that at one place is the red ore seam and at another the Hickory Nut seam, and at another the Ida seam, but they all appear, one above the other?

A. Yes, sir.

Q. In mining this ore the hard ore is all you mine?

A. Yes, sir. There is some outcrop ore, but very little.

Q. Nothing to enter into the operations of the Tennessee Company in the last few years?

A. No, sir.

Q. Have you ever had the ore bed your company is mining bored with test holes to make tests to see how far the deposits stretch so you could get both the area of the deposit and the thickness of the deposit?

A. Oh, yes, we have for years put down different test holes, what we call diamond drill holes in the valley back from the outcrop.

Q. And when you got those test holes, those cores is what you call them?

A. It is called cores, yes, sir.

Q. That is what is left in the drill?

A. Yes, sir; if you are going through ore or sandstone or slate or limestone, you have a core of that material.

Q. You have analyses made of that core?

A. Yes, sir, so we know the grade of the ore in its pure state.

Q. As a matter of fact, the chemical content of the ore in the big seam that the T. C. I. has been mining for a number of years runs pretty even on analyses, doesn't it?

A. No, sir. As you get down towards the Muscoda group,—in fact, the Muscoda group of mines, Number 4 and Number 6 are known as the self-fluxing ore. In other words, there is enough lime contained in the ore to flux the acid and silica in the ore. When you get up to Ishkooda the limestone in the ore is not sufficient to flux the material. Therefore, when that ore is used in the blast furnaces, it is necessary to use a fluxing material, such as dolomite, or else mix it with the self-fluxing ores from some of the other mines.

Q. Now, the Ishkooda ore has a silicon content of about 9 percent?

A. Runs between 8 and 9 percent, yes, sir.

Q. And the Muscoda ore has a lime content of what?

A. Around 12 to 14 percent.

Q. Does the mining of the silicon content ore give off as much dust as the mining of the lime content ore?

A. There is practically no difference in the breaking of the two types of ore.

Q. You are familiar, are you not, with every operation in each one of the mines of the Tennessee Company?

A. I am.

Q. And I would like to know just what tools a red ore miner uses in mining red ore. Will you give us a list of the tools that the head drill man works with, and then the tools that a mucker works with, or a drill man, so, if you will tell us, that we and the Court will know just what physical and mechanical apparatus an ore miner has—

A. In each working place there is what is known—I wish to state first that approximately 98 percent of our ore, of the Tennessee Company, is mined mechanically; that is, by drag scrapers and scraper hoists. Each working heading has a hoist, scraper hoist, which is nothing more than two drums with a motor between a clutch. On each of these drums are wound a wire rope 7/8 of an inch in diameter, and connected to that rope is what is known as a drag scraper that looks very much like a bucket that has four or five teeth on it and shaped very much like this. (Drawing sketch on blackboard.)

There is a rope fastened to this end, and a rope fastened to the front end.

After the ore is drilled and shot, the operator of this drag hoist moves one of the drums which pulls the drag scraper back to the working face. That drag scraper is then pulled in by the other drum, and it follows a path down over what is known as a loading tram or ramp.

The car—the tram car sets in front of this loading ramp, and the operator of that scraper hoist moves the drag scraper over the ramp and pushes the ore into the car. It generally takes four or five operations of this scraper back and forth to fill a six-ton car.

The drill men in drilling the holes for blasting the ore use a pneumatic water type air drill. The type we use are known as the 4 inch machines. All drilling is handled off a tripod.

By a tripod I mean three legged arrangement this way (illustrating) with your drill setting on top.

Holes are drilled to an average of 8½ feet, and in a 20-foot work place with a 10-foot ore, you would drill sixteen or eighteen holes 8½ feet deep.

Each hole is loaded with explosive, and those fuses lighted at the end of the shift, and the force of the explosion in each hole jerks out the solid ore body in chunks.

These chunks are what are loaded by the drag scraper and dragged into the ore cars.

Q. Now, that pneumatic drill weighs about 186 pounds, doesn't it?

A. I think—I believe that is correct, somewhere along there.

Q. And it is left down near the face of the heading or the stope, wherever they are drilling and not brought out of the mine each day?

A. Oh, no, just brought out of the working face so it will not be injured when blasting is done.

Q. Now, the drills that go into the pneumatic part, the parts that cut the ore—

A. The drill steel.

Q. —the steel, is that all in one piece, or under modern practice do you have a steel shaft with removable or detachable bit?

A. In our practice we have four pieces of steel of varying lengths. Your drill is set on what is known as a drill carriage, and you can crank that drill up on this drill carriage, and you make changes of drill steel approximately every thirty inches.

The Court:

Make changes?

The Witness:

Yes, sir.

Q. As your hole—

A. As your hole is drilled you take out your shorter piece of steel and put in a longer piece, and you do that until you get eight and a half feet of hole drilled.

Q. How long are those four pieces of steel? Take the shorter—

A. That is called the starter, and the last piece is called the ten-foot steel.

Q. How long is the starter?

A. That varies,—about this length, (indicating)—about two and a half feet.

Q. And the next piece?

A. Just so you can get in that thirty inches when you crank the drill up.

Q. And your next one?

A. Thirty inches longer until you get in your ten foot steel.

Q. Each one thirty inches longer than the next one?

A. Yes, sir.

Q. Those pieces I have been asking you about, do they end in a cutting edge?

A. No. The drill steel we use have what is known as a forged cross bit which is forged on a piece of steel itself. We do not use detachable bits. We have made some experiments with them, but we do not have them in general use.

Q. Does the drill man have to use anything else besides this drill and tripod and those four pieces of drill steel?

A. Yes. He has to have his air hose and water hose and his lubricator which goes on the drill and supplies oil to the drill.

Q. Aren't there some other drills that are used down in the workings?

A. We have what is known as a small jackhammer drill.

Q. Who uses the jackhammer drill?

A. The drill man uses that in drilling the small holes in the solid wall for putting in what is known as your hanger hooks to hold the hanger around which the skidder block goes, so that this drag scraper can be pulled backwards and forwards.

Q. Now, suppose we have—we consider this (drawing on blackboard) the face right here. That is the vertical face of the unminded ore?

A. Yes, sir.

Q. Of course, the floor would be out here?

A. Correct, known as the foot wall.

Q. The foot wall?

A. Yes, sir.

Q. And your man sets up—the drill man sets up his tripod somewhere on this floor?

A. Above that line.

Q. Above this line?

A. Yes, sir, right there. That is the base, the foot wall.

Q. He will drill how many holes in the average face?

A. The average face, 20 to 22 feet wide, he will drill anywhere from 16 to 18 holes.

Q. Twenty- to 22 feet equals 16 to 18 holes?

A. Yes, sir.

Q. Now, those holes go in at an angle, don't they? They don't go right straight back into the ore?

A. Oh, no. The center of that heading—it is known as a wedge cut. I can show you if you will give me a piece of chalk.

Q. Yes, here it is.

A. I am putting this line across here (drawing on blackboard), because the line of holes, as a rule, is three and a half feet down from what is known as the hanging wall or roof. The line of holes in the bottom is about three and a half feet above the foot wall or floor. Your

drilling will start here in the center. We will say that is a hole. They will go in this direction. Those are known as cut holes. You have another series of holes that will go in this direction, and other holes will pick up in here and you gradually get further apart, and the same way on this side. There would be an end view of this. That is cut holes. Referring to these—

Q. Yes.

A. They look very much like that. They do not come together. Then your other holes come out at a wider angle, and so forth. Then, when that is blasted, this whole area is shot out. The whole thing is pulled this way.

Q. By putting the drill holes in at an angle, the explosive force is better?

A. Yes, sir.

Q. Just as if you reach your finger in a hay stack and jerk it back?

A. Jerk it back. You have to do that to get a point from which to have a free shooting edge on what we call the slab hole.

Q. We don't know what a slab hole is.

A. Those are the slab holes. You understand this entire face is shot, but with fuses,—delayed electrical caps; these holes go off a few seconds before the other holes go off so there is a free open space for these holes to face. It doesn't take as much explosive loading these holes as the center holes.

Q. That pulls out a kind of prismatic area and that takes more explosive to break it out; and the other has a tendency to pull it out in that open space?

A. Yes, sir. In mining language you can get almost as much ore on the toe of the hole there as on the top.

Q. That explosion throws the ore out on the floor of the working place?

A. On the foot wall.

Q. Then, when you come to remove all this stuff that is down on the floor or footwall—it is called muck?

A. Yes, sir, that is your muck pile.

Q. That may be, in some places where you haven't any separation of your top and bottom seam—your muck pile will be all iron ore?

A. That is right.

Q. But if you go down into the other part of the county where your seam is divided, you will have in part shale?

A. You will have probably some pieces of your footwall come up and also some pieces of your top, known as draw slate or draw top rock will come with your ore in blasting.

Q. In mining, when you run those headings you don't try to get ore—suppose you have—what did you say was the average thickness of your seam?

A. At Muscoda around ten and a half feet, and up the mountain it varies from about 8½ feet to 8 feet. That is at the Wenonah Division.

Q. Do you try, in mining, to shoot your shots so you come to the very bottom of the ore bed, and also to the very top of the ore bed, or do you leave—

A. There is a cleavage plane which separates the ore known as the roof—in our mine that is, in a great many cases, solid sandstone or a mixture of sandstone and slate, or solid slate. Your foot wall is generally slate. There is a natural parting there—

The Court:

The footwall is what?

The Witness:

Slate. There is a natural parting there from which that ore will separate when you shoot.

Q. That is on the footwall?

A. And your roof also.

Q. Don't you in some of your operations leave a part of the ore deposit in the top?

A. We do in one mine. That is our Number 13 mine.

Q. Why do you do that?

A. Because by having the top bench ore in some places and the bottom bench ore in another, I can get a mixture of that ore that will run a uniform analysis, that is, it won't be jumping all over the yard and getting the furnaces in trouble. Therefore, we have to load a number of cars of bottom bench ore, and a certain number of top bench ore.

Q. You don't leave that ore to support the roof?

A. Oh, no. It is to get a mixture—

The Court:

What mine is that?

The Witness:

Number 13.

The Court:

Where is that?

The Witness:

Ishkooda.

Q. After your ore, your muck is down on the footwall, you have these cables—you say you have your cars over here—you have one or two cars you have your drums on?

A. You mean the drag hoist?

Q. Yes, sir, the drag hoist.

A. Let me try to show you what that drag hoist is, roughly.

Mr. Burr:

Maybe Ed can draw it better than we can, Crampton.

Mr. Harris:

I hope he can. That is something I can't do.

A. This (drawing on blackboard) is one drum of the drag hoist.

Q. Will you come over here where the Judge can see it?

A. Yes, sir. This is one drum of the drag hoist, on which is wound a 7/8 inch rope. This is the other drum on which is wound a 7/8 inch rope. This here represents a 50-horse power motor that is connected to each of these drums by what is known as a clutch,—not a solid clutch but a jaw clutch is the word I want to use.

The Court:

Jaw?

The Witness:

Jaw clutch, yes, sir. That is the word I want to use. That would be one part of the clutch, and when—that is connected by a lever. This piece goes there and makes a solid connection, so the motor can catch it and turn it.

Q. Sort of like a modified cog wheel, is it?

A. Yes, sir. What was your question, Colonel?

Q. Now, I have gotten a picture of how these things work. You call it a rope. Isn't it a steel cable?

A. It is a steel, flexible cable.

Q. As a matter of fact, you don't use hempen rope in the mine at all.

A. No. This cable is a special type and has a steel center—some cable has a hemp center, but the surface of this rope is very hard, and it is an all steel rope.

Q. So that rope goes out and is fastened to a hanger?

A. May I make another sketch?

Q. Yes, sir.

A. (Drawing on blackboard): This is a typical heading. You have pictures of all this, Mr. Burr, in that article I wrote for that magazine.

Mr. Burr:

I haven't got it here.

Mr. Harris:

I have it up at my office.

Mr. Burr:

Milt, get me one of those pictures.

A. This represents roughly as if you had taken a knife and cut right across the working place, the ore seam, and this represents the mechanical loader.

Mr. Burr:

Ed, let me see. Is that an end view?

The Witness:

Yes, sir. Cut through the ore seam.

The Court:

We are facing the seam of ore?

The Witness:

That would be more or less the section right through here, as if you had cut right through that process. This cross hatched part is known as the hanging wall and roof, and this part is the footwall or floor.

This represents the mechanical loader, which is on a track held down by track wedges and track hooks.

This is the end view of your tram car.

This is known as the ramp. That ramp would be supported by braces and so forth.

Mr. Burr:

What is that ramp made out of?

The Witness:

Made out of nine inch ship channels,—about nine of them make one ramp.

Q. I don't know what a ship channel is.

A. It is a section like that (drawing on blackboard.)

Q. Steel?

A. Steel.

Q. All right.

A. These little places I call broken ore. We will assume that ore was thrown out there after these holes were shot in the face of this working place. That ore is all along here.

The miner comes up with a small jackhammer drill,—we have different types that weigh from twenty pounds to forty pounds,—and he holds that in his hand and drills about a twelve-inch hole in the solid wall. Then he takes wedges and what is known as a hanger,—this hanger is about twelve inches long, made out of steel, and pointed. He will drill a hole and put it in there. That hanger has a little bulge on the end. We will consider this solid wall. That is the jackhammer hole. Then the wedges are driven alongside that hanger on each.

The Court:

So it can't come out?

The Witness:

Yes, sir. They put it in there and make a place where you can hang your skidder block.

Your skidder block is nothing more than a wheel about 14 inches in diameter that will hold—it is a sheave, in other words, built like this, in which your wire rope runs.

To operate and drag the ore in this car, he turns on his power and puts in the clutch on the drum which pulls this drag scraper back. Then he releases that drum and puts in the clutch on the other drum, and pulls the drag scraper along here which pulls this ore along and shoves it in the car.

Q. I get you.

The Court:

How long have you been using that system, Mr. Ball?

The Witness:

We started installing it along in 1915 and completed our mechanical loaders and had all the mines equipped about the end of 1925. During that interval we have built more, of course, as we extended our workings.

Q. Now, I had been laboring under a misapprehension. I thought a jackhammer was something like the old fashioned drill where one man held a drill and the other hit it with a sledge hammer.

A. No, sir.

Q. Your jackhammer is also operated by compressed air?

A. By compressed air.

Q. But it weighs only 20 to 26 pounds?

A. We have several types,—20 pounds, some of them, up to 40 pounds.

Q. How long a bit or drill part do they use?

A. These holes we drill for that hanger,—those vary from 12 to 14 inches. That steel would be about that long,—about 18 or 20 inches.

Q. What diameter?

A. It is 7 8 inch hexagon steel.

Mr. Burr:
What kind?

The Witness:
7 8 hex.

Q. That just means six sided?
A. Instead of a round piece of steel it has six sides.
Q. That hexagonal drill will weigh how much?
A. Oh, about five pounds—you mean that piece of steel?
Q. Yes, sir.
A. About five pounds, the steel we are using.
Q. That doesn't have a detachable bit?
A. No, sir, not the type we are using. That is a forged bit we are using, just like we use with our larger drills.
Q. The wedges that are used to wedge the hanger in the hanger hole are metallic wedges?
A. Yes, sir, steel—iron, I should say.
Q. How big are those wedges?
A. About an inch wide, 3 8 inch thick, and about 6 inches long.
Q. How many holes for hangers would the drill man have to put in your room 20 to 22 foot on the face?
A. Well, he generally puts in—it is a case of like this: It depends on whether he was pulling around a pillar on that stope. I will turn this around for a minute. These cross hatches here would represent broken ore, and the distance over this center line, about 20 feet with a pillar in here. He would probably put in 4 or 5 of these jack-hammer holes so he could get the quickest and easiest route of that ore to come over the ramp to that car.
Q. Would that be—say he had four or five holes,—take four holes; would he drill all four of those holes ordinarily before he started operating the drag, or would he drill one and use what he could with that and then stop and drill another? How is—

A. There has been varying practices on that. A good head miner, I think, would drill all his holes, so, as soon as he quit dragging one portion, he would have a very, very short time to change his block over in the other hanger, you see, to save time.

Q. Then the drill man has as tools that he uses the heavy tripod drill or heavy tripod mechanism?

A. Yes, sir.

Q. Then he has those four pieces of steel,—what do you call them—

A. Drill steel.

Q. —drills that fit into that tripod mechanism?

A. Drill steel.

Q. Then he has a jackhammer, has his drill steel for his jackhammer, and he has his wedges and hammers. What does this hanger weigh?

A. A hanger weighs about—what we know as a C-hook we put in that wedge—Let me explain what a C-hook is.

Q. Yes, sir. I want to learn all I can about it.

A. (Drawing on blackboard) That is made out of iron or soft steel. It gets its name, C-hook, due to the fact it looks like a "C". This portion is hung over this wedge in that hole, and this portion then is hung over the skidder block, and then the rope passed through the skidder block. I would say that C-hook weighs around 8 or 9 pounds,—maybe more, maybe ten.

Q. Now, in using those tools, is it the drill man who drills the hanger holes, or does the drill helper drill the hanger holes?

A. In our system of mining, with the seven man crew, the drill man would be setting up his large machine—You understand it is very seldom they can drill in the same place they are loading. We do on development work.

Q. I understand.

A. The drill helper may drill that or the head miner may do that. We have no fixed rule.

Q. That is, the head miner in the 7-man crew in the daytime, and 8 at night?

A. The 7-man crew is the standard crew.

Q. In addition to that material, the driller uses, as he moves his tripod he has to bring his air pipe along with him, doesn't he?

A. That is right. That is generally an inch and a half hose up to within 25 or 30 feet of the wall itself when they use the inch hose.

Q. Is that a rubber hose?

A. That is rubber hose.

Q. And the joints, you screw them in like a garden hose?

A. We have what we call a spud type connection on the drill for that hose.

Q. That furnishes air for the jackhammer drill and the tripod arrangement?

A. Yes, sir.

Q. What about the water line?

A. That comes from the water line and that hose is a small hose about like a garden hose, half inch hose.

Q. Where are the drills for the jackhammer kept? Take Ishkooda, Number 13, say, and—

A. They are generally kept at each working place and removed behind a pillar or some other safe place before blasting. They stay right in the working place.

Q. Do those drills get dull every twenty-four hours?

A. You mean the drill steel?

Q. Yes.

A. Oh, the drill steel is collected and taken out on the surface and resharpened.

Q. Who determines whether or not a drill steel needs resharpening?

A. The head miner.

Q. And how is it removed—if the head miner in number 13 in the 28th heading, say, decides his drill steel needs sharpening—

A. Puts it on a car or either the motor takes it to the slope—in 13 mine from the face of the drilling place it is carried to the main slope, and from there carried out of the mine by one of the service crews.

Q. Is that system of it being put on trams and trammed out a system that has been in practice since the first day of May of this year, or was that system in practice since October 24, 1938?

A. Oh, any drill steel —we have used pneumatic drills of one kind or another on Red Mountain for a great many years.

Q. I mean in getting them out—

A. I was going to continue, Colonel.

They always have track up in the working place, and the drill steel is put on an empty car or loaded car in some cases and trammed down,—if it is a tram heading, trammed down to the main slope, and if a locomotive haulage heading, it is hauled down to the main slope and over, Colonel, to what is known as the loading point for material and transported to the surface for re-sharpening.

Q. What is a tram heading?

A. Where you drive your openings on about one or two percent grade where your cars will run by gravity down to the main slope and your cars return to the working place,—your empty cars, by mule haulage.

Q. I thought you didn't have any mule haulage.

A. We have in a few cases.

Q. But in most of your places you have electric haulage?

A. Electric motors.

Q. Electric motors?

A. Twenty-ton locomotives.

Q. Your drill steel is taken to the surface and sharpened there?

A. To the mine openings, and there picked up by truck and brought to the blacksmith shop,—the drill steel

shop where they are resharpened and made up in sets of four and wired together.

Q. Do the hangers themselves break and get out of order and have to be taken to the shops for repair?

A. Yes, you have to take them and straighten them out. Sometimes they break. Then you collect those broken parts and use them to make wedges out of.

Q. And the wedges,—what is the life of a wedge?

A. Well, they are pretty easily lost. I would say if you take care of those wedges—properly taken care of,—for two or three days. We make them by the thousand and send in the mines.

Q. Make them by the thousand?

A. Yes, sir.

Q. And the hose pipe for the water and air, where does the head miner and the driller get that when he needs a new joint?

A. Puts in a requisition to the mine foreman or tells him verbally, either one, and that is furnished him at the working place.

The Court:

You mean it is carried down?

The Witness:

Yes, sir, it is carried down like other material and carried in the working place.

The Court:

By the service crews?

The Witness:

Yes, sir.

Q. Well, they haven't been delivered since October 24 1938, all these sharpened drill steels, these repaired hang

ers, and new hangers and new wedges haven't been delivered to the headings at the very face where the men were working?

A. Oh, yes; it has been customary for years to deliver that material to the working face. By so doing we know that the crews could not have the excuse of not having material to work with, and not get their production.

Q. Do you mean to say for years that miners have not carried down any drills or wedges or hangers?

A. Oh,—

Mr. Burr:

Just a minute, if Your Honor please. I haven't objected to all this line of testimony, but I don't see its relevancy after you get away from the face.

The Court:

It is cross examination.

Mr. Burr:

All right, sir. I just want Your Honor to understand our position so there can't be any question by not objecting we are consenting that this is an issue in this case, and that objection is this: That the pretrial agreement, as well as the pleadings—

The Court:

My understanding—I don't know—the purpose hasn't been stated.

Mr. Burr:

Yes, sir.

The Court:

The purpose of those questions. I assume it is a question of how much these that work down there have to do and how much they have to carry back and forth.

Mr. Harris:
That is right.

Mr. Burr:
That is right at the face, but, of course, it wouldn't be a relevant question under these issues as to what they do during transportation.

Mr. Harris:
Oh, no, not at all if the Court pleases. The question is what constitutes worktime.

The Court:
That is right.

Mr. Burr:
Yes, sir, that is it.

Mr. Harris:
There is no use arguing it. Your Honor sees it the way we do, so we will go ahead.

Mr. Burr:
So Your Honor will understand, we are not consenting this testimony is admissible—

The Court:
Do you object.

Mr. Burr:
No, I don't object at this time, but if it is put on as affirmative testimony then I will object and ask to be heard.

Mr. Harris:
What was the question?

(Thereupon the reporter read the question last propounded as above recorded.)

Q. Drills, drill steel, hangers or wedges?

The Court:

Answer the question, Mr. Ball.

A. No, I do not mean to say that. I mean to say the heavy material, like C-hooks, skidder blocks, drill steel,—occasionally a man might pick up a few wedges and put in his pocket as he passes the piles of material that are at the mine mouth as they go in. Sometimes they will stick a piece of drill steel down their pants leg. Miners are peculiar people. They like to have the things with which to work. Materials have been carried down for years.

Q. But the men have been doing it for years?

A. Yes, sir, that is right, occasionally pick them up.

The Court:

We will have a few minutes recess.

(Thereupon proceedings were in recess from 2:45 P. M. to 3:00 P. M., when proceedings were resumed as follows:)

Q. Mr. Ball, those tripod legs get broken or bent and have to be straightened and new ones have to be supplied, do they not?

A. Yes, sir.

Q. And in addition to tripod legs the mechanisms down there require oil, do they not?

A. They do.

Q. And the company furnishes oil for all these various pieces of machinery and equipment that I have asked you about?

A. Yes, sir.

Q. The title to them is in the company?

A. Yes, sir.

Q. The company repairs them?

A. Yes, sir.

Q. The only thing that the miner uses down in the mine which he personally owns is the lamp on his head—

A. That is correct.

Q. —and the carbide in his lamp, the clothes that he wears and the lunch or lunch box he takes with him?

A. That is right.

Q. Now, this system of mining which the Tennessee Company uses here to get the ore out, I believe you said it is what is called the slope system?

A. Modified room and pillar, and those openings are called stopes,—s-t-o-p-e-s.

Q. Now, the passageway leading from the surface of the earth down into the mine is called the slope, isn't it?

A. The mine slope—s-l-o-p-e.

Q. And that passageway ordinarily has been sunk in the ore bed itself, hasn't it?

A. Yes, sir. In a great many cases where the ore body is cut by faults there was probably a little grading done through the rock, the bottom rock to ease out the haulage grade.

Q. And at the present time your mines—Those slopes go such a distance at an angle that when you get to the ore bed where you are actually pulling down the muck, there will be between the men and the surface of the earth a vertical distance of about a thousand or 1200 feet, would there not?

A. The average for the eight of our mines is 1200 feet. We have some mines where the covering is around 1500 feet, and other mines around 1000 or 1200 feet, but the average for the eight ore mines would be approximately 1200 feet vertically.

Q. Have you got a chart or record showing—you are giving from your memory, of course, the average?

A. Yes, sir.

Q. Do you have anything to show the exact vertical depth of each one of your operations?

A. Oh, yes, we have those records.

Q. Could we have a list of it in the morning?

A. I doubt whether we can have them ready by the morning, but I can by Monday.

Q. That will be all right.

Mr. Burr:

Off the record, what is it you want? You want for each mine the depth of the cover?

Mr. Harris:

That is right.

Mr. Burr:

All you want is the figures? Do you want a map?

Mr. Lipscomb:

No, Borden; we want a map, I think.

Mr. Burr:

You just want the figures?

Mr. Harris:

I asked him only for the figures. I haven't looked at the map. You have introduced maps here. I haven't looked at them.

Mr. Burr:

Do they show the vertical cover?

The Witness:

No. Those are horizontal maps.

Mr. Harris:

Have you got a map showing the vertical section?

Mr. Burr:

No. You have asked for so much—

Mr. Harris:

I haven't asked for anything.

Mr. Burr:

Jim is asking. We can't make maps and maps for you. We will get everything that is reasonable.

The Court:

Go ahead.

Q. So, on an average, the men that are working underground in the mines of the Tennessee Company are now working approximately 800 feet below sea level, aren't they?

A. Approximately at sea level. At our Number 6 mine I believe our unloading station is around 100 or 150 feet below sea level. I have not those accurate figures in my mind. That is in general.

Q. Well, are your unloading stations—is that the deepest one you have? Have you tested all of them with reference to sea level at the unloading stations?

A. No. We know that from the elevation. We have our elevations on the survey points at the bottom of our mines. That is all compared and referred to the sea level.

Q. You have that already tabulated?

A. Yes, sir.

Q. You have that already tabulated and calculated?

A. Yes, sir.

Q. There will be no trouble to get that?

A. No, sir.

Q. How far do you travel in your operations in the course of a twelve months period, and by travel I mean how far do you progress into the ore bed?

A. Well, that depends on the differences in the stopes, depends on our development work, and a great many other factors, on the amount of operations, whether they were operating at a normal rate or whether we have to lose time in the mines.

Q. Well, now, during the year 1936, how far did you progress in Number 13 mine that year, say.

A. Well, his working places—You see you progress in ten or twelve working places. Our map shows the yearly progress and the excavation made in each working place.

Q. You don't mean those maps?

A. Not these maps, but we have other maps which show year by year the excavation out of the solid ore for a period of a year.

Q. And you don't carry in your mind how far that distance is year by year?

A. No, because it would vary, Colonel, in each working place,—

Q. Yes.

A. —depending on the overlying cover, how wide our stopes are, how far apart the levels are.

Q. Take the one you moved the fastest in last year?

A. Let's put it this way. I think I can explain by turning this map around. In driving this stope—

The Court:

Just a minute. Haven't you got maps showing the progress you have made each year?

The Witness:

The maps we furnished do not show the yearly progress, but we do have maps that show the progress.

The Court:
It seems to me like that would be better.

Mr. Harris:
We would be glad to have them. I was going to ask them to give me the figures Monday.

Mr. Burr:
Off the record, I don't see it has any irrelevancy, but if we can furnish it without any trouble, we will do it.

The Court:
Go ahead.

Mr. Harris:
You will see in just a minute.

The Court:
Go ahead, Mr. Harris.

Mr. Burr:
We will get anything we can.

Mr. Harris:
He says he has those figures.

The Court:
Go ahead.

Q. Mr. Ball, roughly speaking—

The Witness:
May I interrupt a minute? We can take these same maps we furnished you and put on the progress for the last year.

Mr. Harris:

That will be all right with me, but the government wants it from 1936.

Q. At any rate, the operations underground are a greater distance now from the portal than they were in 1936?

A. Yes, sir.

Q. Roughly speaking, how much further would you say they are from the portal now than in 1936?

A. I wouldn't like to state. The progress is made in so many working places that I wouldn't like to state off hand. By coloring up the portions on those maps where we were in 1936, and where we are now, we can take the shaded area and show the progress.

Q. It takes longer for a man to get from the surface of the mine now to the face than it did in 1936?

A. Oh, yes. As time goes on your working faces will advance further and further from the loading station.

Q. In 1936, you all wrote a letter of reply to the union in which you said it took a man from 6:05 to 6:45 to get to the face?

Mr. Burr:

Wait a minute.—We object to that—

Q. That is right, isn't it?

Mr. Burr:

We object to that question. There is no such letter as that I have seen.

A. I can't answer a question put that way.

Mr. Burr:

The letter speaks for itself.

Mr. Harris:
You know what exhibit—

Mr. Burr:
No, sir. You will not find any letter of that kind.

Mr. Harris:
Exhibit Number 12. Let's see that. There was a reply—

Mr. Burr:
It is in those minutes, and it covers all the men from the first bunch that went in to the last.

Mr. Harris:
That is right. I didn't examine that this morning, but when Mr. Burr read it—I will find the place later,—Exhibit Number 10.

The Court:
Eleven is the proposal of the miners.

Mr. Harris:
Eleven is the proposal and 12 is the answer.

The Court:
It defines the work day, eight hours face to face.

Mr. Burr:
It is on page 15, I think, of those minutes, is what you have been looking for.

Q. Now, in 1936 when the distance was considerably less than it is now, in Exhibit Number 12, introduced by the Tennessee Company, I see on page 15 this statement:

"Our answer to that is no. Our men go in the mines about 6:05 A. M., and they get to their working place about 6:45 A. M."

That is the minutes that were introduced—

A. Yes, sir.

Q. —this morning?

A. Yes, sir.

Q. And if it took that length of time then it takes a longer time each succeeding year, doesn't it?

A. Yes, as the distance to be traveled increases, it takes time to cover that increased distance.

Q. And that is why I want the distance that you have progressed each year from 1936, because we know it took forty minutes for them to get to the face then, and we can take the increased distance—

A. That was in a time statement in there; that was in general.

Q. The statement is there—

A. We have our time—

Q. —and speaks for itself, Mr. Ball. It is for the Court to determine what it means.

The Court:

All right; let's go ahead.

Q. Now, Mr. Ball, when the men, on October 24, 1938, reported for work, the first place that they went to, that is, 98 to 99 percent of the men, was the bath house, wasn't it?

A. Yes, sir.

Q. And then after leaving the bath house the next place in their ordinary trip would be to go to the place where they get on the mantrip?

A. Walk to the mine portal at which is located the check in house or tally house.

Q. That check-in house or tally house is how far from the portal?

A. It is generally just off the slope and back of the mine entrance.

Q. Fifty yards, twenty-five yards?

A. Oh, no; right at it.

Q. Now, when a man comes out of the bath house, how does he know—how did he know in October, 1938, where to go after he got off the man skip?

A. Will you please repeat that?

Q. We will take a miner working at Number 13. Say he reports at six o'clock in the morning. He catches the first man skip down into the mine. How does he know where to go when he gets off that man skip down at the hoodlum?

A. Because he works in a special crew and his working place has been designated by the mine foreman.

Q. And the mine foreman assign all the men that work in a particular mine?

A. Yes. New men are assigned to different work crews. The old crews know their working places and when a working place has to be changed or stopped, the mine foreman assigns that crew to another working place.

Q. So that always, unless the company has changed him, or necessity changes it, throughout a cycle of twelve days the men reporting on a mine crew know where they will go, don't they?

A. Every man knows where he is going in the mine crews. They have their special working places from which they produce ore.

There are occasions when the service men, the so-called company man, do not know whether they are going to work that day on the timber crew or track crew, or whether they will be put in a mining crew to take the place of some miner who has laid off that day.

Q. And that mine foreman, if a man is working with a crew in Number 38 heading, he can change him before he catches the man skip to a different crew in a different heading?

A. He wouldn't know until they get underground. The men wouldn't know until they get underground. After the men get in the mine foreman knows by looking at the check-in board whether the crews are short, and then after he gets underground he would make his arrangements about having his service men fill in for the mine crews.

The Court:

On that, does that trip go back and get the extra man?

The Witness:

No, sir; they are taken on the mine crews.

The Court:

He knows from the board a certain one is absent?

The Witness:

Yes, sir.

The Court:

And then he fills that vacancy from the service crews?

The Witness:

Yes, sir.

The Court:

He knows on the surface, doesn't he, the men he is short?

The Witness:

Yes, by looking at the check board.

Q. And each miner, before he goes down, knows where he is going?

A. Yes, sir, knows his working place.

Q. At the face where he is drilling and blasting?

A. Yes, sir.

Q. Did I understand you to say that cycle lasted about twelve days?

A. No. We said we met the average condition in a stope in about twelve days, but the average cycle in driving the face of the heading averages about 3½ or 4 months.

Q. Then, a crew would operate in the same heading 3½ or 4 months?

A. Unless the mine foreman changed a man from this crew to another crew.

Q. And he can do that at any time he wants to?

A. Yes.

Q. And could from October 24, 1938 up to the present time?

A. It has always been customary for the mine foreman to designate the working places for men or change men from one working place to another.

Q. Suppose a man catches a skip and decides he doesn't like to work in heading Number 58 because that is a long ways, and he will get off and join the closest crew to the unloading place; could he do that?

A. No, sir. The head miner and foreman on that would not allow that. He would be immediately reported to the mine foreman.

Q. If he wanted to move around he would have to apply to the mine foreman or would have to go through the procedure of reemployment?

A. No. If he wants to change his working place, he would ask the mine foreman—he would say, "I am working for John Jones, and I would like to work for Jim Smith if you can arrange it for me." We have made a number of those swaps over a period of time.

Q. So, over a period of three and a half or four months his working place is determine for him?

A. Yes, sir, he knows his working place.

Q. I mean drilling face; his working place where he drills?

A. The drilling face is shown by the sketch to be very close to the working place.

Q. You used the phrase early in your direct examination of company men. What is the difference between a red ore miner and a company man?

A. A company man was the old name for the present service men. The company men are the service men or the men who timber and who lay tracks or do any service that will help the producing crews at the actual working face where the ore is broken and loaded.

Q. Did that phrase originate in the says when the red ore miners were contract miners?

A. Yes. The company men were paid so much per day or shift, and in the old days the miners were paid so much a car or so much a ton, and the reason they call them company men was because he was guaranteed his day's wage as a timber helper or track man or any service man of that type.

Q. Now, at any time since October 24, 1938, has there been any requirement of the company as to the number of tons of ore that a mucker must load on a car during a shift?

A. No. We have had the incentive system in. As each man goes in the mine he is guaranteed his daily occupational rate. If the crew in which he is working loads over a standard base tonnage, they have additional earnings known as incentive earnings.

Q. But suppose—Now, what was the average tons produced per man at Number 13, say?

A. I can't recall just at present what that figure is.

Q. Well, a 7-man crew, how many tons are they supposed to get out ordinarily?

A. Prior to May 1st I believe the 100 percent tonnage was 168 net tons, and the point at which the incentive earnings began was 134 tons for a 7-man crew.

Mr. Burr:

Give me those figures again, Ed. I didn't get them down.

The Witness:

The 100 percent was 168 net tons for a 7-man crew, but the incentive earnings began at 80 percent efficiency—

Mr. Burr:

Yes.

The Witness:

—which made the base tonnage at which the incentive earnings began—

Mr. Burr:

Yes.

The Witness:

—134, and, I believe, 4/10 tons.

Q. Now, during the period from October 24, 1938, to May 1, 1941, was there any requirement as to the number of tons a crew must get out during a shift?

A. There is no requirement except that the men could not go down in the mine and simply sit down. We wouldn't pay them for sitting down. We expect them to give us a fair day's work for the day's pay.

Q. Well, suppose, if 134.4 was the basic 80 percent—Suppose a crew produced 40 tons on Monday, 40 on Tuesday and 40 on Wednesday?

A. There would probably be some good reason for it. There would have to be reason for it. That is why we have supervisory forces.

Q. You say there would be a reason for it. What do you mean—

A. There would have to be a reason for that small tonnage from a 7-man crew. They might have had to handle a lot of rock fall or might have been delayed by the track not being properly arranged or a breakdown in the ramp or mechanical loader.

Q. Now, you speak of a rockfall. That is liable to occur anywhere in a mine, isn't it?

A. Take the draw slate in a working place, and if your top is not properly handled and quarried at the beginning of each mine turn after blasting you are liable to get some very dangerous rock.

Q. And what method is used to safeguard the men against rockfalls?

A. Each man in each working place have quarry bars. there can be no general, large falls between pillars or between headings, but top rock is loosened every time you blast. Now, if a man will start back in a safe place from the working place where the blasting occurs, and test his roof with a quarry bar and bar down loose material, then there is no danger whatever of being caught by a rockfall.

Q. Now, that quarrying bar is another—

A. Tool.

Q. —instrument they use in the mine?

A. Yes, sir.

Q. How big a thing is that?

A. We have some made out of one-inch steel about six feet long, and others made of a lighter type of iron and generally about ten feet long.

Q. Do those bars have to be repaired and sharpened?

A. They have to be sharpened. On one end you have a chisel bit, and in the other a sharp pointed mail bit, so you can get a hold on a rock to break it down.

Q. Assuming all the rock has been quarried down, is anything done in the way of propping the roof?

A. Yes, where timbering is necessary. There is prop timbering and cross timbering.

Q. Tell us how timbering is done.

A. I think I can illustrate by a sketch.

Q. All right. If you have more room on that side you can do it on that side.

A. I am going to illustrate what is known as prop timbering. That is the hanging wall (drawing on blackboard). This is the foot wall. That represents practically the same working place as the one in which I showed the mechanical loader. A hitch is cut in the foot wall and a timber is set known as a prop between the foot wall and the hanging wall, set on different intervals, but on an average around 10 or 12 feet square.

Mr. Burr:
Is that up in the working places?

The Witness:
Sir?

Mr. Burr:
Is that timbering up in the working places?

The Witness:
Yes, sir. Another type of timbering we use is known as cross collars—

The Court:
What?

Mr. Burr:
Cross collars.

The Witness:
Cross collars. This is the opening and we drill holes by jackhammer drill in the ore and put in 2-inch pins

that extend in the ore approximately two feet, and extend out. On top of that is laid a timber. That timber will be wedged up against the roof here by wedges approximately a third. That holds rock.

Q. That cross bar or cross timber in your operations nowadays,—those timbers are creosoted, aren't they?

A. No, very few of those. We use what is known as Douglas Fir and hard pine, 12 by 12.

Q. Do you know of any of your mines where you use creosote—

A. In some of our permanent slopes and main haulage ways we use a creosoted 12 by 12 timber as a cross prop. Most of our timber in our main slopes and haulage ways is steel timber made out of steel I-beams.

Q. Have you noticed in going around through the mines any effect on the atmosphere due to the presence of creosoted timber?

A. Where we use creosoted ties you can naturally smell creosote.

Q. Those other props you mentioned, they are not creosoted, the vertical—

A. No, sir. They are what is known as round timbers and our specifications are 8 to 10 inches at the small end. That is the diameter.

Q. They rot pretty fast, don't they?

A. No, sir, they stand very, very well. I would say the average round timber in our mines stands up very well two or three years.

Q. What happens to them at the end of two or three years?

A. They either break from gradual weight coming on them from the overlying cover, or a gradual dry rot takes place.

Q. Now, if the dry rot—that means that the combustible material in the timber is burned up, oxides?

A. Makes carbon dioxide.

Q. Turns from wood into carbon dioxide?

A. Yes, sir.

Q. And carbon dioxide is a chemical that doesn't help the lungs when you breathe it?

A. Every time you breathe you exhale carbon dioxide.

Q. When I exhale?

A. Yes, sir.

Q. But if I breathe it in—

A. If you find it in large quantities you can't burn a light, so there is no danger of you getting into a large quantity of carbon dioxide.

Q. The aid in a coal mine—I mean in an ore mine is not anything like as pure as the outside air?

A. On our main intake we have practically the same air as the outside, except that the humidity of that air runs very high due to taking up water as it passes through the mine.

Q. You say your main intake?

A. Yes, sir, at our main intake.

Q. You mean you pump the air—

A. No, sir, we exhaust the air with fans. That lowers the pressure in the mines below the atmospheric pressure and the atmospheric pressure forces air in.

Q. When you are running those—

A. It is known as the exhaust system of ventilation.

Q. When you exhaust it the air is being forced out of the mine. Does the fresh air going down to take the place of the bad air go down the same slope your bad air comes out?

A. No, sir; oh, no. Your bad air goes out one place and your good air comes in another. You couldn't take bad air out and put good air in the same place unless there was a partition. There must be a difference in pressure to get the flow.

Q. So, where you have exhaust fans, those fans are pulling the air out—

A. It is pulling it out and exhausting it on the outside, and your fresh air is going down the main slope and from there sent around over the mine by different switches and governed by doors you can regulate.

Q. How far is your exhaust fan from your main slope?

A. We generally set them off anywhere from 50 to 100 feet off from the main slope.

Q. Now, the air that the men use in drilling is furnished under what pressure at the compress?

A. Our blow-off valves are set at about 85 and 90 pounds. Taking into consideration your line loss which accumulates by forcing this air through your pipe line, you 6 and 8 inch pipe lines or 12 inch pipe lines, so that at the drill face we have an average of 68 to 70 or 75 pounds of air for each drilling machine.

Q. What is the point of maximum efficiency in your drilling machine, the point of pressure?

A. With our 4 inch machines our maximum drilling—that machine was designed to operate at about 70 pounds of air, and does good work at 60.

Q. But if the pressure drops down to 40, what about your drill machine?

A. Naturally you cannot drill as fast.

Q. That would slow up production?

A. Slow up your drilling, yes, sir. When you slow up your drilling you don't have any ore broken to load.

Q. The man skip that is provided in the mines, are they all the exact size one of the other in your different mines?

A. No. At our limestone mine that skip runs on a standard track gaged 4 feet 6 inches, and—whatever the standard is. On the other slopes the track gage is 5 feet.

Q. Well, a man trip is just simply a box shaped car, isn't it?

A. We have nothing known as a man skip. We use the regular ore skips for man trips, and when men are riding in that it is known as a man skip trip.

Q. All right. Now, how long in feet and inches is that ore car or ore care or ore trip that you use?

A. That skip—we have varying lengths. I would say roughly 14 feet long.

Q. And how wide is that portion of it which can be used by men as they ride down into the mine?

A. Be a little less than five feet wide.

Q. It has no overhead cover to protect the heads of the men, has it?

A. No, sir.

Q. How many men did you say ride in that car of that side?

A. 38 to 40.

Q. 38 or 40?

A. Yes, sir.

Q. Well, that means when you put 38 to 40 men in an ore skip of that size that those men are packed in there like sardines in a car, didn't it?

A. No, sir, it does not. They ride very comfortably. I have ridden in a great many of them.

Q. You have ridden where there were 38 other men and been very comfortable?

A. Oh, yes.

Q. Has it come to your knowledge since you have been out there that men have been injured merely by the crowding in the man skip?

A. There have been one or two isolated cases. I can't just remember when. I don't know, of course, in recent years. I know of probably one case where a man slipped out of getting out of the skip and injured his foot, something like that, turned his ankle.

Q. And in some of those man skips, some of the men, as they go down, have to get down on their knees to keep from having their heads knocked off as they go down the slope?

Q. How high is the back of the skip above the floor?
A. I would say around 6 feet 6 inches.

The Court:
All of them?

The Witness:
Yes, sir.

Q. So far as you know, and in the years you have been there with them, there have been no skips in the operations of the T. C. I. Company's manskips where the men either had to crouch like this or get down on their knees as if they were in a position of prayer as they went down—

A. It is very easy for them to keep their heads below the top of the skip. We have had a few accidents in the past where a man has violated a rules and stuck his head up above the skip.

Q. The back of a skip is how high?
A. 6 feet 6 inches.

Q. As along as he didn't stick his head above 6 feet 6 inches he would not get hurt?
A. That is right.

Q. At Ishkooda mine the exact measurement of an ore skip, Number 13 mine, the length inside is 12 feet 6 inches, and the width inside is four feet four inches; is that right?

A. I don't know. It sounds about right. I said approximately 13 feet long and less than five feet wide.

Q. Would you say the depth of that skip is not 4 feet 8 inches?

A. No; the skip is lower at the front end than the back.

Q. What is the front end depth?

A. I don't know. I can get those measured for you.

Q. But there isn't any question if the back end of a skip is 6 feet 6 inches above the floor a man would be—

A. I would say it may be more or less. It may be approximately less. I do not have the exact measurements in mind. I can get the exact dimensions, though.

Q. One of the men—Since these hearings came up you had a man injured in one of the T. C. I. mines that happened to raise his head in a man skip and has his face injured; do you know about that?

A. I wouldn't be surprised, yes, sir. I remember an accident of that kind.

Q. Now, have the men during the years '38 to '41,—have they been instructed to keep their heads down as they ride the man skips down?

A. Every man is instructed what safety measures to follow in riding a skip, especially new men.

Q. What are those safety measures?

A. To not push or have any rough play in the skip, and keep your head below the top and not stick your head up suddenly.

Q. Now, when a man gets there every morning, you say that all you required was that there be enough men there to fill a skip at six o'clock?

A. No; I said fill the skip around 6:07, I believe.

Q. Well, I didn't mean—

A. Roughly around six o'clock.

Q. That is a fault of my memory, 6:07 or whatever it was.

A. Yes, sir.

Q. And you do require and have all during the period from October 24, 1938, up until May 1, 1941, that the men be there in sufficient numbers to fill a skip by 6:07?

A. So we would have enough men present to take the first skip down, and when there is a second trip ready there will be enough to fill that trip. The men have been very good in scheduling themselves. A man may take the first trip today and the second trip tomorrow. That has been done.

Q. But the company did not allocate skip number one to 38 men and skip number 2 to another 38, and skip number 3—

A. No, sir, not any given individuals. We did not require that.

Q. And after the regular three skips had gone down, or if it took six skip loads to get them in, if they had run, suppose a man reported one minute after the last skip had gone down; what happened to him?

A. Every effort was made to get him in the mine.

Q. How did you—

A. I do not remember any case in recent years where a man was turned back from the mine if he was a few minutes late.

Q. How did he get down?

A. On a skip.

Q. Run a trip for just one man?

A. After all the trips were down, and he was a little late, and they had pulled one trip of ore, they would stop and let that man down.

Q. But you rarely had to?

A. Yes, sir. Our men have been very, very good about being on time. We have had very few cases of lateness.

Q. The men had nothing to do with fixing the time when the man skips would go down?

A. No, sir. That was the function of the management to designate the time when they start.

Q. And when they quit?

A. Yes, sir.

Q. After the men have finished their drilling and are coming out of the mine, they have to walk from the place where they have been drilling or mucking to a manloading or unloading station, don't they?

A. Yes, sir; yes, sir.

Q. Now, is that station fenced in or marked off or designated in any physical and material way?

A. Oh, yes. They have seats and benches for the men to sit on while they are waiting to be hoisted out of the mine.

Q. Now, take Ishkooda 13. Did you have more than one manloading station in there, during those three years I am interested primarily in?

A. I do not think so. Just one manloading station there.

Q. How big a place is your unloading station,—loading station?

A. Oh, they will vary at the different mines. I couldn't give you the exact dimensions of those stations.

Q. Just approximately?

A. Oh, probably large enough with benches enough to seat 60 or 70 men, I would say, roughly.

Q. A man walks from his drilling place or his mucking place in the mine to the manloading station at the end of his shift, doesn't he?

A. That is correct.

Q. And how do you determine what men are coming out first? How did you during the three years from October, '38, to May, '41?

A. As a rule your so-called service company men, whose place of beginning work or their work was near the tool house or tool box near the loading station would be the first men to come out. They were the first ones to go in generally in the morning and the first to come out. Then, as these stragglers came in, section helpers and mechanical loading operators, they were hoisted out just as fast as we could get them out, 40 men at the time,—38 to 40 men at a time.

Q. And the company determined when they would be brought out?

A. We had a regular schedule time for hoisting out which was supposed to be three fifteen. Our average for all the mines on Red Mountain showed the first skip left the underground manloading station underground at 3:14.

Q. And the last one left when?

A. That would depend on how many men you were using in there, and how many mantrips you had to operate.

The Court:

I would take about 8 or 9 minutes each?

The Witness:

Roughly, yes, sir.

Q. A man had no say as to when a skip would run, or whether he could get a particular skip? If another man got there ahead of him he had to wait?

A. They generally line up by the entrance to the manloading station. Those that come there first would get on the benches nearer the door of the manloading station, so the first bunch that got there would go out on the first trip, and then the men would move up and the next bunch would go out on the second trip.

Q. You spoke on your direct examination as to surveys that had been made as to the time it took men to walk from the manloading station to the different faces at which they drilled and mucked. Were you present down in the mine at the time those surveys were taken?

A. No. I had my engineers and operating men and industrial engineers make those surveys.

Q. Were those surveys made by men who were carrying drill steel or wedges or hangers or tripod legs or cans of oil, or were they made by men empty handed?

A. They were made by engineers probably carrying tape or something of that type.

Q. And when you figured the time that it took them to walk back from the face to the manloading station, were those men who did that walking men who had already put in six or seven hours in the mines at heavy manual labor, or were they men who had not been doing manual

labor at all that did this walking on which you based your calculations?

A. They were men who, instead of walking to some one working place from the man underground unloading station, walked to all the working places at that mine during the term and timed it.

Q. Yes, but at the time they were walking either going out to the face or coming back from the face to the man loading station, they were not men who had already done six or seven hours of manual labor, were they?

A. No, but they were men who had done a lot of walking that day; that is, they took more than one walking place that day.

Q. All they were doing that day was merely walking to test the time from place to place?

A. That is correct; making time studies.

Q. Most of your operations are not on level ground? Your ore bed does not lie level?

A. It varies and rolls and pitches.

Q. In going to one part of the mine a man may be going down hill to his room or drilling face or working face, whatever you call it, and in coming back he may be climbing up a hill?

A. Yes, sir.

Q. So the actual distances from the manloading station to the drilling places is not always an accurate indication of the time it takes to go and return?

A. On these time studies the time was accurately taken at a normal rate of walking.

The Court:

Is that set out on your diagram and maps?

The Witness:

It is in my testimony, I believe, Your Honor.

Mr. Burr:
Yes, sir; it is on the maps also.

The Witness:
Is it put on the maps? I didn't know about this last set that was made up.

Mr. Burr:
Yes, it is on the maps too.

Mr. Harris:
If the Court pleases, I don't know whether I want to pursue the examination as to the physical and material aspects any farther or not. It is pretty close to adjourning time, I imagine, and I thought if it was agreeable with the Court the lawyers on my side might have a conference and determine whether they had any further examination, and then I could take up the contractual and negotiational features in the morning.

Mr. Harris:
Does Your Honor wish to go ahead?

The Court:
I expect we had better adjourn.

We will adjourn until 9:00 o'clock in the morning.

(Whereupon, at 4:10 P. M., July 9, 1941, an adjournment was had to 9:00 A. M., July 10, 1941.)

July 10, 1941, 9:00 A. M.

Court met Pursuant to Adjournment.

The Court:
All right. Are you ready?

Mr. Burr:
Yes, sir.

935 E. M. BALL thereupon resumed the stand, and having been previously sworn, testified as follows:

Cross Examination—Resumed.

(By Mr. Harris):
Q. Mr. Ball,—

Mr. Burr:
All the lawyers are not in yet, Crampton.

Mr. Harris:
Shall I wait a while, Judge, or go ahead? Mr. All and Mr. Brodie are not here.

Mr. Burr:
Mr. All is here.

Mr. Harris:
I will go right ahead.

Q. Mr. Ball, in the classification of company men, a skip tender would be called a company man?
A. Yes, sir; service man.

The Court:
Skip tender?

Mr. Harris:
Yes, sir, skip tender.

Q. Now, what does a skip tender do?

A. I didn't catch that question.

Q. What does a skip tender do?

A. He is in charge of the skip. When the skip is loaded with ore he gives the signal to the engineer. If he is handling a mantrip he gives the mantrip signal and the engineer knows he is handling a mantrip.

Q. Does he ride the skip in and out?

A. Occasionally he rides down to the hoodlum going in and out. Usually he goes in on the last trip and comes out on the last trip.

Q. Are powder men called service men?

A. Yes, sir.

Q. Where do they stay when they are at work?

A. They stay the most of the time at what is known as the underground powder magazine.

Q. How far is the powder magazines from the underground man unloading station?

A. It is different in different mines. We try to get it as close as we can so we will not have any more loss of time than necessary in the men coming to the magazine and getting powder and going back to their working places. That varies in different mines.

Q. You have what is called a pipe man?

A. Yes, sir.

Q. What does he do?

A. He keeps up the pipe line and small pumps and things of that kind.

Q. Where does he get his pipe?

A. He gets it at the underground supply house.

Q. Is that at the powder house?

A. No, sir. The powder house is separate from the other supplies.

Q. Do you keep the underground supply house near the underground man loading station?

A. It is in the vicinity of the underground man loading station.

Q. You have track men?
A. Yes, sir.
Q. They are called track men?
A. Service men.
Q. The same thing?
A. The same thing, yes, sir.
Q. What do the track men do?
A. They lay the track in the mine working places so the tram cars can get up to the ramp or so-called chute, and be loaded with ore.
Q. Suppose you are extending your main slope; the track men would lay the track along that extension?
A. Yes, sir, when we were. We are down in the basin now. We wouldn't extend the main slope, but we would extend the main haulage levels.
Q. If you extend the main haulage level you have to put tracks in, and the track men do that work?
A. Yes, sir.
Q. Where do the track men get their material?
A. They handle their materials. It is loaded on the surface on a tram car and fastened behind the skip and lowered into the mine and then unloaded underground at the material yard, and at that point is loaded on other cars and carried to the designated points by the electric locomotives.
Q. Now, I understood you to say on your direct examination that the time of the service men was counted at the tool house?
A. The tool house or tool box.
Q. And that is near the underground manloading station?
A. Yes, sir, in the near vicinity of it.
Q. Now, service men would get their assignments from the company as to where they would work, wouldn't they?
A. Oh, yes, they mine foremen.
Q. How often would they have those—in the ordinary work, suppose you were extending the main haulage way, —would that take a month or week or two weeks?

A. Might take a week. It depends on how much they were laying. If they were extending it from one working place or stop to another, they could probably do that in two or three days or a week.

Q. When they start on a job, their assignment, whether it lasts a week or two weeks, they know where to go until that job is over?

A. Yes, sir, they are assigned to the different jobs by the mine foreman.

Q. And the work begins where they pick up their tools?

A. Yes, sir, begins where they pick up their tools.

Q. And that was true from 1938 on?

A. Yes, sir.

Q. The service man, when he picks up his tools at the tool house, sometimes he will have to walk a quarter of a mile or half a mile or a mile?

A. Depends on where he has to do the work; various distances.

Q. He would be paid for that time walking to those different places?

A. That includes part of his day's work.

Q. Now, then, suppose a service man had reported at the tool house, and just after he reports at the tool house and is checked in his time begins, that the mine foreman had found that he needed somebody on a drill crew, and he switches a service man to a drill crew,—that happens occasionally, doesn't it?

A. Oh, yes, very, very frequently.

Q. Now, when he switches a service man to a drill crew, does the pay of the service man continue from the time he reported at the tool house, or is his pay suspended until he gets to the place where he is needed with the drill crew and then starts?

A. Oh, his pay would start from the time he is underground, and he would be assigned to this crew, and when

the turn was over or the shift for that crew, he would leave with the rest of the crew.

Q. So that, under those circumstances, when he walked from the tool house to the working face he would be paid for the time spent in walking, wouldn't he?

A. Yes, sir. He would be probably a little late in getting to the working place because, if he were a regular member of the crew, he would go along with that crew, but not knowing there was a shortage in the crew until the mine foreman got underground and assigned him, he would probably arrive later at the working face than the other men.

Q. Now, then, suppose that member of the service crew as taken off the service crew and put on a drill crew on Monday and then on Tuesday he would still be needed in the same working face on the same drill crew,—do you follow me?

A. Yes, sir.

Q. He is going to continue to work not as a man repairing tracks, but he is going to be in the drill crew. Prior to May 1, 1941, would that man, in walking over the same distance, going to the same place, be paid for the time he was walking, or would his time start when he got to the drill place?

A. His time would start when he got to the regular working face, because he would take the occupational rate either as a section helper or drill helper, whatever it would be, in that working place. He would take that occupational rate for that turn.

Q. So that one day his walking—he is paid for his walking and another day the same man would not be paid for walking over the same identical part of the mine?

A. Oh; no, no. I don't think you quite get the idea. The first day, after he was appointed by the mine foreman to take the place of an absent member of the mining crew, he would no doubt arrive late at the working place, probably five or ten minutes late. The next day, if the mine

foreman still knew the man was going to be short on that crew, he would tell that man to take the same job he had on the previous day at the occupational rate, whether it was a section helper or drill man.

Q. But as I understand it, when he started walking from the tool house the first day when he goes to relieve the man, he is paid for that time spent in walking?

A. He is not working. He arrived late.

Q. What about his pay; that is what I am interested in.

A. When they go underground that meant for the beginning he was in the usual place of work, but if we change the place of work, if this man is told by the foreman to change his place of work, that is for our own reasons and conveniences, and, therefore, if he arrives late at the working place he must be paid for that because we have changed his place of work.

Q. But the following day he wouldn't get any pay for that time he was walking?

A. He would report—he would know his time and place of work would be in that certain working place and he would report there at the regular time of work. He would not be late.

Q. That would not cover the time he was walking from the hoodlum or manloading station until he got to the drilling place?

A. No, sir. That would be his regular place of work for that turn.

Q. Now, was I correct in assuming you went to work there in 1902 or was it 1909 you went to work there?

A. 1902.

Q. And from 1902 up until May 1, 1941, both the rates of pay and the lengths of shifts have changed on numerous occasions, haven't they?

A. Oh, yes; changed from the 10-hour day to the 8-hour day, and depending on—during that interval—whether it was mechanical loading or hand loading, the rates of pay have changed for the different occupations.

Q. Now, have those—let's take the year 1902. Have you in your own mind the recollection of the rates of pay at that time?

A. No, sir, I have not.

Q. Have you records which show—

A. I think our records go back that far, yes, sir.

Q. And do your records show the years in which the rates of pay were changed?

A. I believe they could find that.

Q. You don't know those different years where the rates of pay changed?

A. No, sir, I do not.

Q. But there has never been a uniform rate of pay from the time you went there which continued up to May 1, 1941?

A. Oh, no; different economic conditions, different business conditions determine the rate of pay.

Q. Now, then, the length of the shift has never been one and the same from the time you went there to work there until 1941?

A. Up until 1914 our mines ran on the contract system, paying so much a ton. The contractor and his men would load a certain amount of ore, and if he was satisfied he and his men had loaded all the ore they wanted that day, they came out. Our mines were very shallow in those days and they walked out.

Q. Let's develop that a little further.

A. All right, sir.

Q. From 1902 up until 1914, were all the service men under the contract system?

A. No, sir; they were on the day basis, day basis or shift or turn basis.

Q. The muckers and drill men and drill helpers were contract men?

A. Yes, sir.

Q. Did I name them all, the drill men, drill helpers and muckers?

A. Yes, sir, I think you named them all.

Q. The service men up to 1914 were on a day rate?

A. Yes, sir.

Q. What was the length of the shift of the service men up to 1914 when the contract system was abolished?

A. I think we were on the 10-hour day at that time.

Q. How was that 10-hour day at that time computed?

A. In and about the usual working place underground.

Q. And at that time the usual place of work underground was at a very short distance from the mouth of the mine?

A. Compared to the present mine workings, yes, I would call it very short.

Q. Now, in those days, up to 1914, the service men then were paid as they entered the mine, weren't they?

A. Well, they were men on what you might call a turn basis or shift basis.

Q. Well, what do you mean by a turn basis or a shift basis?

A. A certain amount of work to do in and about their usual places of work, and at those dates I believe we were working on what was known as a 10-hour day.

Q. Well, where did you—in those days where was the time of the service men taken?

A. It was always—it has always been customary on Red Mountain when the mine enters—when your mine became what is known as an underground mine, not the outcrop workings, there would be a check-in house or tally house similar to the one in vogue today, and the men would check in at this tally house.

Q. Where was that tally house?

A. At the mine portal.

Q. At the mine portal?

A. Yes, sir.

Q. That continued up until 1914?

A. Yes, sir.

Q. Now, then, the contract men, how were they paid?

A. He was paid—at some of the mines in the early days I believe they had scales, but as a rule they were paid on so much a car. Those cars were generally two-ton cars,—of a capacity large enough to hold two tons.

Q. In those days did a crew consist of seven men or nine men?

A. It varied, depending on the contractor, and how much work he wanted personally to do in drilling.

Q. Up until 1914, was there a task which the company expected and required the contractor to do each day?

A. No, sir. That was one of the reasons why they changed over from the contract system to the so-called day system,—because a lot of these contractors would lay off and not produce ore on the days that it was necessary.

Q. The contractor in those days hired his drill helpers and his muckers, didn't he?

A. The Tennessee Company—they were hired through the employment department. If the man wanted a certain man—if the contractor wanted a certain man to work for him, he would bring that chap and tell the superintendent, "I want to hire this man; he is a good man." He would be written up and employed.

Q. Well, who paid the drill helpers and the muckers? Suppose Bill Smith, for example, up to 1914 was a contract miner in one of your mines?

A. In our system of contracting, when a man worked in the mine with a contractor as a drill helper or drill runner or mucker, he was guaranteed that day's rate, whatever it was, three dollars, four dollars, four dollars and a half, whatever that occupational rate was at that time. Then that time was deducted from the contractor's total earnings. If he was paid 50 cent a car and he ran 100 cars, 50 cents times 100 cars would be his earnings for that period.

Q. Fifty dollars?

A. Yes, sir. Then his labor was deducted from that amount, also his supplies, fuses, caps and so forth.

Q. Let's take Bill Smith's crew, four muckers; he recommends them to the company and the company determines whether they work in the mine or whether they don't, and those four muckers are guaranteed by the company a certain daily rate of pay, a daily wage?

A. Under our contract system, when they went in the mine?

Q. Do you recall how much that was up to 1914?

A. No, sir. The rates have changed over the years so many times I do not recollect what that rate was.

Q. Suppose—there were times when it wasn't more than $3.00 a day, wasn't there?

A. I wouldn't say.

Q. You just don't know?

A. No, sir, I don't recollect.

Q. All right. Suppose his four muckers don't load enough coal the week—I mean enough ore during the week to earn the amount of money that the company has guaranteed them. Then what happens?

A. The contractor would be what is known as "going in the hole" and that would charged up against his account and when he would make more than that he would have to pay for that deficit from one month to the other.

Q. Now, suppose that the four muckers and the drillers got out more than enough to pay them; suppose that 100 tons you mentioned was his task and these men worked hard and got out 150 tons; did they get any more pay or did they get the basic guarantee that the company—

A. They were only paid on the payroll their guaranteed wage. If he was a very smart contractor in those days he would hand his men a little on the side on pay day so he could hold a good crew.

Q. But they didn't get any more money if he was not a smart contractor and did not give them on the side to keep them in a good humor, they didn't get any more—

A. They didn't get any more on the company's payroll because they were working for the contractor, but their

day's pay was guaranteed by the company when they entered the mine.

Q. In those days, up to 1914, suppose the men—say a shift went on at 6:00 o'clock in the morning, and by ten o'clock each man had loaded his ten tons of ore. Would they come out of the mine if they wanted to then? Just—

A. Generally 20 tons in those days. If he finished it at any time, yes. I have seen contractors and their men come out on a half day basis, three quarters of a day. Everything being just right, they would go in and hurry up and load a certain amount of ore and then come out of the mine.

Q. Now, suppose they had a situation that slowed them down in getting out the ore and wanted to stay in an hour or two later to make up the shortage they had experienced during the day; would they do that?

A. Miners, as a general rule, don't do that. In those days they were human. I don't think they worked over their regular time at any time that I can remember.

Q. Now, then, at 1914 when you abolished the contract system, the system you called the contract system,—

A. Yes, sir.

Q. What system was instituted?

A. Known as the pay day system,—day pay.

Q. Tell us what that was and how long that lasted.

A. Rates were established for what is known as the section foreman, who would be in charge of the work of the crew. Rates were established for the drill man, drill helpers, and for the muckers.

They would go in there and work on the ten-hour basis —at that time we were on the 10-hour work basis, and we attempted to make a task basis.

In other words, we felt that a man could load his 18 or 20 tons, and as a rule they did.

Q. Now, you said the rates of pay. Who established that rate of pay, the company?

A. They were established by the engineers and the management based on the previous rates of pay that the contractors had made, or a good miner could make under favorable conditions.

Q. How long did that 10-hour task system last? Have you any idea?

A. We went on an 8-hour basis during 1921, I believe, for a very short time, and then went back to the 10-hour day, and that lasted until some time in 1933.

Q. Wasn't—

A. Then we went on the 8-hour day basis.

Q. Wasn't there a time during the first World War on your 10-hour basis, where, if the men were in the mines ten hour you paid them for eleven hours work?

A. I was not here at that time, but I know that was a fact; that during that emergency, instead of a raise in wages, they paid them additional hour.

Q. Who did your work during the year you were in the army?

A. My mine captain.

Q. Do you remember his name?

A. Mr. Jack Tamblyn.

Q. Is he still with the company?

A. No, sir; he died several years ago.

Q. Now, you say in 1933 you went on the 8-hour day?

A. Yes, sometime in 1933.

Q. And from 1933 on up to October, 1938, did you stay on the 8-hour day?

A. Yes, sir.

Q. And then in 1938 did you change or still stay on the 8-hour day?

A. Still stayed on the 8-hour day.

Q. Now, during the years that you have been connected with the Tennessee Coal, Iron & Railroad Company the company has always determined who should and should not enter the mine; isn't that so?

A. Oh, yes, certainly.

Q. And no matter what system was used by which men were selected, the company determined that system and the company made the selection?

A. Oh, yes. You wouldn't want strangers in your mine or non-employees in the mine. Any men entering the mine had a definite working place which was assigned to him by the mine foreman.

Q. And during that whole period different kinds of work got different pay, didn't they?

A. Oh, yes. Different occupations require different rates of pay.

Q. During that whole period the company could assign a man from one kind of work to a different kind of work and thereby change his rate of pay?

A. Certainly.

Q. And did it on many occasions?

A. Oh, yes. We do that now.

Q. What was the first kind of, or the name of the first kind of employees' representation that was had in the mines of the Tennessee Company after you began work there?

A. It was about 1917 and was known as the Mutuality Committee.

The Court:

Mutuality Committee?

The Witness:

Yes, sir.

Q. Now, was that before you had what was known as the Employees Representation Plan?

A. Yes, sir.

Q. How long did your Mutuality Committee function?

A. From about 1917 until about 1933.

Q. Was that Mutuality Committee affiliated with either —was it affiliated with the American Federation of Labor?

A. No, sir.

Q. When did your Employees Representation Plan go into effect?

A. About the spring of 1933 as near as I can remember; 1933, I think, in the spring.

Q. And how long did that last?

A. Until about February, 1934, when certain changes were made in the Employees Representation Plan, and it was called afterwards the plan of Industrial Relations.

Q. Now, when you were working under the Mutuality Committee, how many Mutuality Committees were there, —one from each mine?

A. There was one for each division and as a rule, as I remember, there were three members of that committee for each division.

Q. Did the company select all three of those, or just the head one?

A. To start off with the company picked three men who were employees of long standing and who had a good standing in the community and who the company felt had a wide acquaintance among their fellow employees. These committeemen were appointed for one month or two months or three months, and then when a vacancy occurred, the remaining members of that committee selected another employee to take the place of the one whose term expired.

Q. Then, when your Employees Representation Plan went into effect in '33, did they have committees?

A. Yes, sir.

Q. A committee from each mine?

A. Each division had a committee, and they also had a general committee.

Q. Now, how were the committees from each mine selected to start with when the Employees Representation Plan went in?

A. There was a primary held at which the employees could vote with a secret ballot for some employee whom they wished to represent them. Each committee consisted of three whites and three colored.

Then, after the primary election and six white men and the six high-colored were put on the main ticket for the final election and were voted for, and the winners became the committee.

Q. Now, suppose that a man was up in the first election who was not acceptable to the company; was his name voted on?

A. I just don't get you.

Q. Well, on that selection of those committees for the E. R. P. did the company have anything to do with their selection?

A. No, sir. I just explained how those men were selected in the primary and then in the final election.

Q. I know, but you said—

The Court:

How long did the Employees Representation Plan exist after 1933?

The Witness:

Until about—the Employees Representation Plan, Your Honor, was changed over in February, 1934, and called the Plan of Industrial Relations, and gradually faded out during the summer of 1934.

Q. That was the same thing that was generally used throughout the United States Steel Corporation during that time, wasn't it?

A. Yes, sir.

Q. Then, in 1934, when E. R. P. petered out, what plan—

A. That was—in the early part of February, 1934, the plan was changed over and called the Plan of Industrial Relations. That was in February, 1934.

Q. Did the company notify the men in writing they were changing over from that plan to the other plan—

A. They had regular committee meetings.

Q. What is that?

A. They had regular committee meetings and so forth. It was at the request of the committeemen that certain changes were made in the Employees Representation Plan and the Plan changed over to the Plan of Industrial Relations.

Q. And that also was a general plan in effect by the United States Steel—

A. Yes, sir.

Q. Corporation throughout its operations in America?

A. That is correct.

Q. And that was called the Industrial—

A. The Plan of Industrial Relations.

Q. The Plan of Industrial Relations?

A. Yes, sir.

Q. How long did that last?

A. To use your own words, Colonel, it petered out in about 1934 in the fall.

Q. Now, up until 1933, there had not been any union in the Red Ore Mines of the Tennessee Coal, Iron & Railroad Company in this district which was organized and affiliated with and chartered by the American Federation of Labor, had there?

A. There was no union.

Q. And neither was the employees representation plan or the plan of Industrial Relations chartered by or affiliated with the American Federation of Labor?

A. It was not.

Q. The C. I. O. or the International Union of Mine, Mill & Smelter Workers had not come into the picture of the T. C. I. operations here up until 1933, had it?

A. About the summer of 1933.

Q. When the International Union of Mine, Mill & Smelter Workers came into this district, did you have orders to cooperate with them and help them organize?

A. No. That is a very funny question.

Mr. Burr:

We want to object to that sort of question, Your Honor. The other was probably relevant—

The Court:

I don't see the materiality.

Mr. Burr:

We don't want to try any of those old labor wars we have been over so many years.

The Court:

It is cross examination. I will be liberal with you.

Mr. Burr:

We don't object to them asking Mr. Ball—if they go into those matters, we expect to object, of course.

Mr. Harris:

Here is the reason I am going into that, if Your Honor please: It is on account of the issues in the case that have been framed by the gentlemen on the other side. You see the method he started out on in his pleadings and in his development of the case by his examination of Mr. Ball,—his written claim in his pleadings was that the members of these unions are estopped or have waived their rights in this matter on account of the fact that there has been bargaining back and forth between the employees and the company.

Now, we are asking these questions to show whether or not there had been any genuine collective bargaining between the employees and the employers, and we feel that under the issues in the case—

The Court:

What is your question now?

Mr. Harris:
That when—

The Court:
Just read it.

(Thereupon the question last propounded was read by the reporter as above recorded.)

Mr. Burr:
He has answered that.

The Court:
He has answered no.

Mr. Harris:
I didn't catch that. All I heard was, "a very funny question."

The Court:
All right.

Q. And at no time—

Mr. Burr:
Now, don't answer this question until I get a chance to object.

Q. And at no time since the International Union of Mine, Mill & Smelter Workers came into this district have you had orders, up to May 1, 1941, to cooperate and help them with the organization of independent unions among your employees, have you?

Mr. Burr:
Now, just a minute. If Your Honor please, we object to that question. It is—in the first place it couldn't pos-

sibly be relevant to any issue here, under the pleadings in this case.

The attorneys representing the unions here seem to be trying this case on the question of, waiver and estoppel. I thought I made that plain to the Court and to the counsel —I tried to,—in the beginning, that that is a matter we are not concerned with at the present time.

The Court:

I sustain the objection.

Mr. Burr:

We will not offer any of this testimony on the question of waiver.

The Court:

I sustain the objection.

Mr. Harris:

If the Court please, we are not offering this evidence merely to rebut a claim of estoppel and waiver, but they are claiming an acquiescence in a custom or tradition, and I think the Court is entitled to a complete picture of the industrial relations existing between the employer and the employees in order to ascertain whether or not there has been any acquiescence. In other words, if the company were in position, absolutely, to dictate all terms of employment and all hours of labor and rates of pay, if the company set up its own union,—for instance, Mr. Ball has introduced documents between a Brotherhood of Miners of Captive Mines.

Now, if the company sets up certain organizations over here and then the company starts dealing with the organizations which it has set up, it seems to us that that fact is a vital fact for the Court to know.

They come in and say as to these unions and these men there has been a tradition and custom, and we say no, that

couldn't be true, whatever you did was with unions or organizations which you yourself promoted.

You see the basis of the rights of men under our system now, under the Acts of Congress, they are all guaranteed the right of collective bargaining if they are engaged in the production of goods for interstate commerce.

So, it is my purpose to bring to the Court information that shows that there has been—I think the record already shows it if the Court examines it with that point in the Court's mind,—the record already shows to some extent there had been no collective bargaining, so, instead of having a mere portion or fragment of the picture in the record, I am trying to bring out to the Court a complete picture of that situation of which Mr. Burr gave the Court a glimpse and stopped.

I think it is a very vital matter in the case.

The Court:
Go ahead.

Mr. Burr:
If Your Honor will hear me on my objection—

Mr. Harris:
May it please the Court, I want to reply.

Mr. Burr:
It is my objection. I have the right to reply.

The Court:
Go ahead. Don't argue with each other. Talk to me.

Mr. Burr:
I am going to talk to you.

The Court:
Yes, sir. All right, talk to me.

Mr. Burr:

I don't want to talk to anybody else.

The Court:

All right.

Mr. Burr:

As to the relevancy of the testimony, I offer in this case, it is offered solely for the purpose of bearing on the intent of the Congress in the event there is any ambiguity in the Act. The evidence I offer has no reference to company unions or otherwise. The evidence I offered tended to show, whether it was a so-called company union which existed in 1934, or the other union, which was sufficiently strong to close down our mines in 1934 and close them down in 1936, is at that time the company union made no reference at all to transportation time, and that the other union—we have shown from the beginning what their position on the matter was; we have shown what their position was at all times. They first presented a request for half time which was never thereafter insisted upon.

We traced the bargaining relationship of that union which they now want to show was a hostile union all the way down. We have laid it down. We have given you the facts. If they want to show anything different, they can show anything different they can. We have presented this by what Mr. Ball says are the minutes of the meetings with the committees, by the proposals of the committees and by the contracts which were finally signed.

Certainly we can't go off into any warfare between these two unions. We had a warfare which we spent nine months up at the Court House trying, and then settled and buried it and it ought to stay buried. It can't have any bearing on the question which we have here.

The question is was this custom universal before this law was enacted? If it was universal, we must consider

it was universal. It doesn't make any difference how the custom arose.

As far as that is concerned, it is shown it couldn't be against any union, whether it be company or national, because what they presented was all they could present,—that was at arms length across the bargaining table, resulting finally in a contract which they solemnized in writing over the signature of their national president, agreeing that time should be computed on a face to face basis.

Now, we submit, may it please the Court, to go into these questions of how much or how little union support the company extended hasn't got a thing in the world to do with this case. We are proving that both unions, whether they be company unions or what not, took certain action through their committees in their negotiations with the company, and that is all that is relevant here. We have proved that both unions presented their suggestions. I don't care how strong or how weak they were. They represented our employees. That is the only issue on this hearing. The dispute between the parties,—between the two unions,—has nothing to do with it.

Mr. Harris:
Now, if the Court please—

Mr. Burr:
Now, I want to close.

Mr. Harris:
I just want to say—

Mr. Burr:
It is my objection and I want the right to close on it. I want to conduct this thing properly. I am through.

The Court:
I will let him say a few words.

Mr. Burr:

Well, I want the right to close on my objection.

Mr. Harris:

If the Court please, it is a far stretch of the principles of reasoning and logic to say I want to show some detail of what went on here in the Birmingham district between some of our employees and the company in order to show the intent of Congress, when there isn't any evidence in this case that this particular plan was known to Congress. Now, he says it was universal. There is no evidence in this case that this plan was universal. The only evidence on that we have is that these things that have been described as the Mutuality Committee and the E. R. P. and Industrial Plan extended throughout the United States Steel Corporation's operations in America.

Congress wasn't legislating merely to cover the United States Steel Corporation. Congress was legislating for the entire industrial picture in America, and that picture covered everybody, high or low, great company or small company, if the company was engaged in interstate commerce and if the employees were engaged in producing good for interstate commerce. It is impossible to segregate and say we will show this picture to show the intent of Congress, and then say we won't let you show the complete picture.

Why is the Congress being presumed to base its intent on a partial knowledge of the situation? If they have any knowledge of it, they have it all. If he brings out part of it, we are entitled to bring out all of it.

I am not going into why they had the strike. I am not asking why they had the strike. I am asking about the nature and character and kind and quality of these organizations that existed and he had dealings with, and I think we are entitled to show it.

Mr. Burr:

If Your Honor please, I am very glad Mr. Harris has said something that I agree with. I think ultimately what he calls the national picture in application to this Act is going to have to come into this case for this reason: Section 7 of the Act doesn't say anything about underground coal mines, it doesn't say anything about underground ore mines—

The Court:

No.

Mr. Burr:

It just says that all employers,—that is the steel plant out here —

The Court:

The lumber companies.

Mr. Burr:

The lumber companies and the textile mills, and it is common knowledge,—I call it that because it has been in the newspapers,—it is common knowledge as soon as this ruling was made by the Administrator, which is bound to come in issue ultimately in this case,—that is what they are standing upon here,—just as soon as the Administrator ruled that irrespective of contract; irrespective of custom; traveling time—not tool carrying time, but traveling time, —was intended by Congress to be a part of the workweek, what happened? Immediately employees of the Textile Mills,—one up here in Huntsvile,—it was in the papers about it,—demanded they be paid from the time they came in the gate until they got to their looms; immediately the limestone mines in Shelby County made the same contention. Those are particular operations. Immediately employees in the Lake Superior district began to file suits for open pit mines and under ground mines on the same theory.

Immediately the question became of national importance way beyond the interest here of these four or five little ore mines out here we are investigating at this time, because immediately, if Your Honor sustains that ruling, it affects the traveling time not only of these four or five ore mines, but it affects the traveling time in the Lake Superior district which produces, under the figures everybody knows about, over 94 percent of the iron ore produced in the United States. Don't think for a minute this will not be before we get through—this will not be a national picture. I don't object to him making a national picture of it; I don't object to him asking if that was the rule and policy of the United States Steel Corporation over the country; we did not object when they went in that field, because I think it will be relevant in this case. We are not only not objecting, but we are going to challenge it to show that the conditions they base their opinion on existed all over the United States. We are going to show after that that the Administrator's opinion is based on a report of a man named Stein; we are going to take issue with that report and show how it couldn't possibly sustain the Administrator's ruling. So much for the national aspect.

What is it this question proposes to show? We haven't objected to any question along the lines he makes his argument on, but what I am objecting to is his showing any dispute between the unions. If he wants the record to show the bare facts, that is all right, but I don't want to go into the details of any dispute between the unions.

The Court:

I didn't understand he is asking about any distinction between unions.

Mr. Burr:

Let's read the question.

The Court:

Mr. Burr, I have given you a good deal of latitude in going into the intent of Congress.

Mr. Burr:

Yes, sir.

The Court:

This is cross examination.

Mr. Burr:

I don't want Your Honor to take any chance on limiting it myself if you have any doubt about it.

The Court:

There isn't any chance: I just want to keep within issues and treat everybody right.

Mr. Burr:

Let's see what this question is. We may be able to decide this by stipulation. There was a bitter row between the company and the Smelters Union.

Read the question.

(Thereupon the reporter read the question last propounded as above recorded.)

Mr. Burr:

Now, if Your Honor please, if that question were answered in the affirmative, we would be subject to a hauling up before the National Labor Relations Board in less than fifteen minutes.

The Court:

Not for the past.

Mr. Burr:

Well, we would have been if they had cooperated in the past, and that is what governed. The company couldn't—this crowd over here on this side of the table would have been on our necks with both feet if we had favored the other crowd, and vice versa if we had favored the other crowd.

Ask him if there were any orders given about it.

We object to it and insist on our objection.

Mr. Harris:

We insist on the question.

The Court:

I overrule the objection.

Mr. Burr:

We respectfully except.

Mr. Harris:

Mr. Ball, do you remember the question?

The Witness:

I would like to have it read.

Mr. Harris:

Will you read the question, please?

(Thereupon the reporter read the question last propounded as above recorded.)

The Witness:

Read that last part again, about the independent unions. I didn't get that. Smelters Union and independent union are all in that same question. I don't get it.

Q. At no time since the International Union of Mine, Mill & Smelters Workers came into this district have you ha dorders from the Tennessee Company to cooperate with them and help them in the organization and formation of unions affiliated with the International Union of Mine, Mill & Smelter Workers?

Mr. Burr:
Now, we want to object, to this renewed question.

The Court:
The same ruling.

Mr. Burr:
Yes, sir, and we except.

A. I have had no such orders.
Q. Now, then, you had another group named,—employees, called the Brotherhood of Miners of Captive Mines, didn't you?
A. We did? Is that—
Q. I mean in your company?
A. Oh, yes, in the company, yes.

The Court:
You mean working for the company?

The Witness:
Yes, sir.

The Court:
Employed by the company?

The Witness:
Yes, sir.

Mr. Harris:

That wasn't a trick question. I didn't mean any trick question to the witness.

Q. When did the Brotherhood of Miners of Captive Mines get organized among your employees?

A. During the fall of 1934, to the best of my recollection.

Q. And when did they pass out of existence?

A. I believe it was in February, 1939, when they became affiliated—they changed their named and became affiliated with the American Federation of Labor.

Q. Did the American Federation of Labor take over the Brotherhood of Miners of Captive Mines?

A. I do not know what the arrangements were with the American Federation of Labor.

Q. Now, in—Mr. Burr said you had a strike in 1934, and that strike began on what day and ended on what day in 1934?

A. On May 4th and ended with the letter of understand which was date, I believe, June 26th or 25th, and we went back to work on July 2nd or 4th,—the 5th, rather, —either the second or the 5th,—I am not certain of those dates,—but it was right after the 1st of July when the strike ended.

Q. So that the strike lasted approximately two months, didn't it?

A. Yes, sir.

Q. The company operated approximately two days after it was settled?

A. I believe it was about a week. I am not certain on that. That is my recollection, about a week.

Q. And they quit operations within a week?

A. That was at one division, at the Muscoda Division, and I would like to say at the Ishkooda Division—I believe there was one mine at that time still in operation, Number 8, at the Wenonah Division.

Q. But the other mines—

A. Were idle. During the depression we operated only one mine in each division.

Q. Now, from the time the International Union of Mine, Mill & Smelter Workers had unions in this district among your employees—

Mr. Burr:

I didn't hear that question. Will you please—

Q. From the time that the International Union of Mine, Mill & Smelter Workers had organizations in this district among the employees up until 1938, those unions were constantly asking the company for contracts?

A. I don't know that you can say constantly. I have previously testified as to the times and dates at which proposals were submitted by the union to the company.

Q. They made a proposal each year up until 1938, didn't they?

A. I have previously testified to the dates when proposals were made for contracts.

Q. Can't you summarize for me and tell me whether they made proposals each year?

A. They only asked for contracts in the years I have testified to.

Q. They asked for a contract in 1934?

A. They asked for one in September, 1933,—I believe it was September,—and I believe in April of 1934.

Q. Then they asked for one in 1935?

A. In 1935.

Q. Then they asked for one in 1936 and 1937, didn't they?

A. I think there was one in 1936.

Q. There wasn't in '37?

A. No, sir.

Q. There were no—

A. There were no—In 1937, a part of that year, we were in the National Labor Relations trial, and we had no contact with the Smelters Union.

Q. The first contract that was ever made with this union or any affiliate of this union in the mines of the Tennessee Company was made only 18 days before the Fair Labor Standards Act was passed, wasn't it?

A. I presume you are excluding the letters of understanding as the—

Q. Well, your letters of understanding were addressed to Madame Perkins or to other people?

A. And to the heads of the Union.

Q. And my recollection is that I asked you yesterday if the only contract that was ever had up to 1938 was the contract of October 6th; that is correct, isn't it?

A. Yes, I think it was in October, 1938.

Q. 1938, I mean.

A. Yes, sir.

Q. October 6, 1938?

A. Yes, sir.

Q. Now, when these various representatives of the union affiliated with the International Union of Mine, Mill & Smelters Workers came in to negotiate with the company about contracts or other matters affecting the employee-employer relationship, the meetings were always held on the premises of the company, were they not?

A. Yes.

Q. You never at any time went to a union hall to conduct your negotiations?

A. No.

Q. And those meetings were held at a place selected by the company, weren't they?

A. Yes.

Q. And frequently they were held here in Birmingham in the general offices of the company?

A. Yes.

Q. And in those meetings you had some employee of the company who took down stenographic notes of the meetings, did you not?

A. Yes, sir.

Q. When was it that you started having a reporter present at those meetings to take down the minutes of the meetings and what happened at the meetings?

A. I think that was in 1933, fall of 1933. I believe our minutes go back to that date.

Q. It was 1933 when the International Union of Mine, Mill & Smelter Workers came into this district?

A. Yes, sir.

Q. So, in all the negotiations between the committees representing the Union and the representatives of the company you have had stenographers present at the meetings taking down in shorthand what happened in the meetings?

A. Where there were—the regular meetings at the divisions or at the general superintendent's office there were minutes kept.

Q. Now, those minutes that were taken down by the stenographers were transcribed, that is, typed, and preserved, were they not?

A. Yes, sir.

Q. Ordinarily, was that stenographer who took them down your private secretary, if you had one, or the president's private secretary, or the vice president's private secretary?

A. It was some stenographer from my office, either my own personal secretary or a stenographer in that office.

Q. Now, where are those minutes now?

A. They would be—I presume copies in the files of the Smelters Union, and copies in the files of the Tennessee Company.

Q. You preserved them in your files?

A. Yes.

Q. Now, in 1933, when the first proposal was made by the International Union of Mine, Mill & Smelter Workers for a contract, was that proposal a verbal or oral proposal on the one hand, or a written proposal on the other, the very first one?

A. I believe that was a—I know it was a written one. It had eight or nine suggestions or proposals in it.

Mr. Harris:

Have you got those exhibits that were introduced on yesterday?

Mr. Burr:

Judge, while they are getting those, isn't now a good time to take that five minute recess?

The Court:

We will take a recess for five minutes.

(Whereupon from 10:10 A. M. to 10:20 A. M., proceedings were in recess, after which proceedings were resumed as follows:)

The Court:

All right; let's proceed.

(By Mr. Harris):

Q. Mr. Ball, the first proposal in 1933,—I notice you didn't introduce that yesterday. Where is that first written proposal?

A. I think all we introduced here was the memorandum of the verbal request which was taken down.

Q. And that was a memorandum of your reply to the verbal request, wasn't it?

A. Yes, sir, and a memorandum stating what the request was.

Q. Where is the original written proposal?

A. There was not an original written proposal at the first meeting. I had reference to the memorandum when I said it was a written request.

Q. Do you recall who was the stenographer that took down the minutes of that very first meeting with this Union?

A. They didn't keep regular minutes for that meeting, but a memorandum of the eight or nine points. I believe that man's name was Mr. John Bowen, the President's secretary.

Q. Is he living?

A. Yes, sir.

Q. And still in the employ of the company?

A. Yes, sir.

Q. Now, yesterday I noticed you introduced a paper or a letter signed by a man named Horn, A. E. Horn, one of your exhibits. Is Mr. Horn still living?

A. Yes, sir.

Q. Is he still a representative of the union or is he in an executive position with the company?

A. He does not work for the Tennessee Company.

Q. Do you know where he works?

A. I believe he works for the government at Sheffield. I saw him the other day. I think he was in the Court room here yesterday for a short time.

Q. Did Mr. Horn continue to be affiliated with the union on prior to the time he left the employment of the company, or did he become an executive or an administrative officer of the company?

A. Mr. Horn, as far as I know, has never worked for the Tennessee Company.

Q. He worked for the Republic Company, didn't he, or do you know?

A. I do not know. It was either Republic or Woodward Company. I think he was an iron worker, boiler maker,

Mr. Harris:

Will Your Honor indulge me just a moment? I might save some time here.

The Court:

Yes.

Mr. Harris:

During the recess I was having to get suggestions from the associated counsel.

The Court:

Yes.

Mr. Harris:

While I am letting one partner of mine work on that, I will identify some documents, Judge.

The Court:

All right.

Mr. Harris:

This is merely for identification, Mr. Burr.

Mr. Burr:

That is all right, sir.

Q. I show you a book on which is printed "Rule and Regulations Governing the Safety of the Tennessee Coal, Iron & Railroad Company, Ore Mines and Quarries, March 7, 1937," and down underneath, "Workmen".

I will ask you to examine that and tell me whether that is what it purports to be.

A. It was of this date. I believe there have been some later issues of this safety rule book, but I don't recollect what date

Mr. Burr:
May I suggest you mark them for identification?

Mr. Harris:
I am going to have them marked.

This is the latest one I have, Mr. Burr.

Q. Would it be much trouble, Mr. Ball, for you or Mr. Burr to get me copies—

Mr. Burr:
We will be glad to give you any copies we have.

Mr. Harris:
Will you mark that for identification Defendant's Exhibit Number 1?

The Clerk:
Defendants' Exhibit Number 1.

(Thereupon the said document, entitled, "Rules and Regulations Governing Safety, Tennessee Coal, Iron & Railroad Company, Ore Mines and Quarries, March 7, 1937, Workmen," was marked "Defendants' Exhibit No. 1.")

Q. Mr. Ball, I show you another book similar to the first. On the back of it is printed, "Rules and Regulations Governing the Safety of Employees of the Tennessee Coal, Iron & Railroad Company, Ore Mines and Quarries, January, 1926, Workmen," and both of them have the safety legend, "Safety First—T. C. I.," and ask you if that is what it purports to be?

A. Yes, sir.

The Court:
1926?

The Witness:
Yes, sir.

Mr. Burr:
What was the date of the first one?

Mr. Harris:
1937. 1937 was my first one, and the next one is 1926.

The Court:
What is the exact date?

Mr. Harris:
January, 1926. Will you mark that for identification Exhibit Number 2?

The Clerk:
Yes, sir.

(Thereupon a document entitled "Rules and Regulations Governing the Safety of the Tennessee Coal, Iron & Railroad Company, Ore Mines and Quarries, January, 1926, Workmen," was marked "Defendants' Exhibit No. 2.")

Q. I show you another book on which is printed, "Plan of Industrial Relations in Ishkooda Division of Tennessee Coal, Iron & Railroad Company, adopted by the Employees February 2, 1934, and Accepted by the Management, Ishkooda Division of the Tennessee Coal, Iron & Railroad Company February 2, 1934."

Are you familiar with this book?

A. Yes, sir. This is—

Q. I am not going to ask any questions about it.

A. Yes, sir; this is correct.

Q. I am not going to ask any questions about it. I just want to identify it.

A. Yes, sir. There was one for each division at that time.

Mr. Harris:

Will you mark that for identification?

The Clerk:

Defendants' Exhibit Number 3.

(Thereupon the said document entitled "Plan of Industrial Relations in Ishkooda Division of Tennessee Coal, Iron & Railroad Company, Adopted by the Employees February 2, 1934, and Accepted by the Management of the Ishkooda of the Tennessee Coal, Iron & Railroad Company February 2, 1934," was marked Defendants' Exhibit No. 3.")

Q. Then I show you another one on which is printed "Ore Mines Incentive Plan, Memorandum of Change from Base of Gross Tons (2240 pounds) to Net Tons (2000 pounds) Tennessee Coal, Iron & Railroad Company, Ore Mines and Quarries, January 1, 1939.

A. Yes, sir, I remember this very well. That is what it purports to be, yes.

Mr. Harris:

Will you mark that Defendants' Exhibit Number 4 for identification?

(Thereupon the said document, entitled "Ore Mines Incentive Plan, Memorandum of Change from Base of Gross Tons (2240 pounds) to Net Tons (2000 pounds) Tennessee

Coal, Iron & Railroad Company, Iron Ore Mines and Quarries, January 1, 1939", was marked for identification Defendants' Exhibit Number 4.)

Q. Now, on the—Mr. Lipscomb calls my attention to the fact that in framing my question I didn't use the same identical question. When I said about the industrial plan, I should have asked if it was what it purported to be.

A. Yes, sir, that is right.

Q. Now, when you went on the incentive plan—

Mr. Harris:

Would Your Honor mind if I stood up occasionally?

The Court:

No.

Mr. Harris:

To rest myself?

The Court:

No.

Q. When you went on the incentive plan, who determined whether or not to go on the incentive plan, the employees or the management?

A. In the final analysis the management had to determine that, because the Smelters Union practically refused to try out the plan.

Q. Now, at the time—it was in 1936, I believe it was, Mr. Ball, wasn't it?

A. Yes, sir.

Q. At the time the incentive plan was proposed, how many men constituted a drill crew?

A. You mean a drill crew or a regular mining crew?

Q. Well, thank you. I don't know it anything like as well as you do, and never can, of course. If I use the wrong word, don't hesitate to call my attention to it.

A. The standard mining crew that we had in a working place at that time had eight or nine men. It varies. It had increased from an average of 7 men during the depression period, because we were trying to make as much work available as possible for our employees at that time, and over a period of years, you might say the depression years, the crew gradually increased from 6 or 7 men up to—

Q. Nine men?

A. About 9 men, yes, sir.

Q. Now, when the incentive plan—Will you name those nine men, if you can?

A. Yes, sir. There was what is known first as a section foreman; there were two drill runners, a drag operator, two drill helpers, I believe,—that makes seven, and a haulage engineer where we had auxiliary hoists. Have you counted that for me?

Q. I was checking them. I was listening to them rather than counting them.

A. Yes, sir.

Q. How about the muckers?

A. I should have said one drill helpers, and that would make—

The Court:

Seven.

The Witness:

Yes, and then two—one drill helper and two muckers. I believe that would make the nine men.

Q. Now, then, under the incentive plan—Mr. Brodie has been counting it and he says it makes eight.

A. Just add another mucker there.

Mr. Harris:

See what your count makes.

Mr. All:

Eight. Let me see. A section foreman, two drill men, two helpers,—five—

The Witness:

You add one helper to make up the nine men.

Q. Wasn't it a drill helper as a matter of fact?

A. It may have been; it may have been a drill helper.

Q. It was my understanding there were two drill helpers at that time?

A. Yes.

Q. Then, under your incentive plan that contemplated cutting down a mine crew from nine to seven didn't it?

A. Yes, sir,

Q. And that was one of the things that the Union men objected to, wasn't it?

A. That was part of the proposed plan, and I presume that was one of the things.

Q. When that plan went into effect, I believe you said yesterday you figured the normal production of a crew was about 168 tons?

A. It was for the incentive plan.

Q. That is what I mean, yes, sir.

A. Yes, sir.

Q. And you figured—

A. That was 100 percent performance.

Q. I am coming to that.

A. Oh, yes.

Q. I will get to that.

A. Yes.

Q. Then the 80 percent basis which constituted the task you would expect the men to fulfil before they got the benefit of the incentive plan—

A. Yes.

Q. —it amounted to about 134.8 tons?

A. About 134.4.

Q. 134.4?

A. Yes, sir.

Q. Now, how did you figure what price per ton—How did you arrive at your figures on the number of tons they should be paid for?

A. Can I show that on the blackboard?

Q. Well, I think if it is agreeable with the Court and these gentlemen you can rub off some of that on the blackboard if it has been copied.

Mr. Burr:

He can redraw it and furnish a copy later.

Mr. Harris:

It is satisfactory with me. He can make a better drawing—

Mr. Burr:

On a piece of paper.

Mr. Harris:

—than I can anyhow, and it is satisfactory with me.

Mr. Burr:

It is satisfactory with me.

The Court:

How about Mr. Brodie:

Mr. Brodie:

That is all right.

The Court:

Is that all right with you gentlemen?

Mr. Smith:

Yes, sir.

Mr. Burr:

I think we can give you a picture.

A. I would like to check your question. You want to know the basis on which we figured the 168 tons?

Q. Yes.

A. Our studies made by our mining engineers and industrial engineers show that a fair base to start from would be three tons per man hour. That is the base,—three tons per man hour. There are seven men in the standard crew; seven men such working eight hours being 7 time 8, or 56 man hours. Therefore, 56 times 3 equals,—6 times 3 are 18,—168 tons as perfect performance, or as 100 percent performance.

Eighty percent was the figure adopted at which we would start to pay on the incentive basis. Eighty percent times 168 equals the 134.4 tons as the base tonnage.

Q. Now, then, for that base tonnage 134.4 tons, what were the members of the mining crew paid?

A. They were paid on a percentage basis times their hourly or their daily rate. For instance, if this crew loaded their 168 tons, that would be 20 percent over the base, of which 50 percent went to the company, and 10 percent to the men. Therefore the earnings,—if they average 168 tons over the pay period,—would be 10 percent. Each man's daily earnings—rather, the pay period earnings were increased 10 percent. He had his guaranteed rate plus a 10 percent increase in that rate.

Mr. Burr:

I think he wants to know first how the guaranteed rate was fixed.

Mr. Harris:

That is all right. He answered what I had in mind.

Mr. Burr:

All right.

Q. The way you answered I think was a little confusing; that the men got 10 and the company got 50 percent. What you mean was the company got 50 and the men got 50?

A. Yes.

Q. And that operated to produce a ten percent increase in the men's pay?

A. Yes, sir.

Q. Now, suppose that instead of producing 168 tons they produced 200 tons.

A. Your percentage increases more.

Q. Would you percentage of increase remain the same, or if they produced more would the percentage diminish or would it increase?

A. No; it stays on the same ratio; that is, if they would double that tonnage they would get a corresponding increase. If the tonnage went up this figure of ten percent would go to fifteen or twenty percent, dependent on whether they loaded more than 168 tons.

Q. To express it another way, if they produced 20 tons more they would get the same price per ton for that extra 20 that they would get if they produced 50 tons more at a price per ton?

A. Oh, yes. I think I see what you mean. If they produced, 50 tons more—

Q. Yes.

A. —would the proportionate increase in their wages be the same as if they produced 100 percent more?

Q. That is right.

A. That rate remains the same.

Q. And it wouldn't result in a diminished price per ton of ore produced?

A. Oh, no; that percentage was added on their daily wage.

Q. Yes. There is one other thing, and then I think I am through, Judge.

Somewhere in your testimony, my recollection either as to these tickets,—and if I am wrong, you correct me—

A. Yes, sir.

Q. —or somewhere else, that it always showed eight hours. Do you recall that? I—Was that with reference—

A. No, sir. That was on the underground foreman's distribution sheet where he kept the time of his men, put down their names and check numbers and so forth.

Q. Now, I don't understand that, quite, Mr. Ball. You say it always shows eight hours. Would that mean if he stayed there six hours it would still show eight hours, or if he stayed there 9 it would still show eight hours?

A. Yes. They didn't keep any accurate time at the working face, and as the rates of pay and the day's work was computed on an eight-hour basis, he put down eight hours.

Q. That is all right. Thank you.

A. That was to show he did not leave the mine.

Mr. Harris:

Thank you. I think that is all I care to ask him, Judge.

The Court:

All right, Mr. Brodie.

Mr. Brodie:

I just have a few questions.

(By Mr. Brodie):

Q. Mr. Ball, there were a few things in the history of the mining on Red Mountain I didn't quite understand. I wonder if you will explain to me a little more fully. Can you tell me approximately when iron ore mining started on Red Mountain—

A. Oh, it was—

Q. —on a commercial basis?

A. Well, way back in the Seventies. You will have to check that figure, but it was a great many years ago.

Q. What kind of mines were they? Were they the same type of mines as you have today, or were they strip mines?

A. They were known as outcrop workings in which the overlying cover was stripped off and you had the same thing very much as an open pit mine.

Q. And in those days I assume the men came right up to the pit and started right in working?

A. Yes, sir.

Q. Have you any idea how much the men were paid in those days?

Mr. Burr:

We want to note an objection.

A. No, I haven't.

Mr. Burr:

We might get into the price of flour back in those days.

The Court:

That is too far back, I think, Mr. Brodie.

Q. Can you tell me how they were stripped? Were they stripped by hand?

A. In those days there was very little mechanical apparatus used in doing that work. It was done with pick and shovel and wheel barrows.

Q. Am I right when I say a strip or open pit mining was discontinued when the covering became so deep it was no longer economical to remove it?

A. Yes, sir, that was a general rule.

Q. And approximately at what point, with respect to depth of cover, would determine whether it was economical to remove it?

A. That would depend on how much erosion, which would come back to the question of the depth of cover.

Q. Was it about 28 or 30 feet?

A. The depth of cover varies. I can show by a sketch what I mean by that. This is, say, your surface contour of your Red Mountain Ore seam as a rule, a cross section through Red Mountain in general,—something like that, that being your ore seam. (Illustrating on blackboard.)

Now, when this covering in here got so heavy that it was uneconomical to handle it then—when they took this portion of the cover off this ore seam in here was mined with open pit methods. From that point on they would go underground when the covering got heavy. For a distance down from the outcrop of 300 feet,—that is an average figure,—the ore had been weathered and was what is known as soft ore or semi-hard ore.

Q. Then you struck hard ore?

A. Yes, sir.

Q. That had not been exposed to the elements?

A. That is right.

Q. Did you start going underground when you struck the hard ore?

A. No; there was a good deal of that 300 feet that was mined in underground working, that soft ore, with headings.

The Court:

You mean the hard ore too?

The Witness:

The soft ore and hard ore too.

Q. Approximately when did they begin to sink a slope to go underground?

A. Oh, different slopes on Red Mountain were opened at different times. I do not recollect just what date each

slope was opened. I could get those figures from the books.

The Court:
Were you there then, Mr. Ball?

The Witness:
No, sir.

Q. When the mines first began to go underground, if I understand it correctly, they began to sink a slope along the seam?

A. Yes, sir, it followed the ore seam.

Q. And as they sank the slope they removed ore?

A. Oh, yes.

Q. That is, the slope was in the ore?

A. The slope was in the ore itself.

Q. And how far would the slope progress normally, do you know?

A. There would be varying figures on that depending on the conditions of the times, whether they were in a depression or whether the work was going on and so forth.

Q. Do you have any maps which indicate the distances the slopes progressed annually?

A. Yes, I think we have those records going back a number of years.

The Court:
I thought it was understood yesterday he was going to bring them for the past few years, and there was an understanding they would be marked—

Mr. Brodie:
Well, Mr. Harris referred to them since 1936. I want to know if they had them prior to that time.

The Court:
How far back are you going?

Mr. Brodie:

Well, I don't know. I just asked the question for the purpose of information.

Q. Now, from the open cuts, how was the ore removed?

A. By blasting and by handloading into tram cars.

Q. And then when you went underground how was the ore removed?

A. By loading into tram cars.

Q. What is the difference between a tram car and a skip? Is there any—

A. A skip is the mine car or you might call it container which brings all the ore out of the mine through the mine slope. The tram cars are the smaller cars which are in each working place.

Q. Now, when was the first skip installed?

A. In 1902.

Q. I think you were responsible for that, were you not?

A No, sir. My father was.

Q. Oh. I see. And how far from the entrance had the heading advanced at the time of the installation of the first skip?

A. Well, that would vary for each mine on Red Mountain. The mines in those days were very, very shallow.

Q. And did the men talk down into the mine or did they go down in a skip?

A. In the majority of the cases they walked in the mines, because the mines were very shallow in those days. You could go through and inspect four mines in half a day then whereas now it will take you two days to make a really good inspection of our large iron ore mines.

Q. In going down this ore seam, I take it occasionally you would strike a fault?

A. That is correct.

Q. What would happen when you would hit a fault?

The Court:

Why is that material, Mr. Brodie?

Mr. Brodie:

Well, if Your Honor please, the question here is what happens at these mines, and I would like to—we have gone into the picture to some extent—

The Court:

Has any fault been shown during the period since 1933? We are not going into the whole history of the mining industry here in this district.

Mr. Brodie:

No, I am not endeavoring to go—I just have one or two questions.

The Court:

All right. I don't want to cut you off, but I just want to get down—All right.

A. This occurs in the ore seam, and your ore would run up against a fault plane, a down throw fault. Down throw faults are more general on Red Mountain. Your ore seam looks like this (illustrating on blackboard). There would be a displacement just like you did your hand and did that (indicating).

Q. You would tunnel around your fault?

A. Yes, sir, on a larger scale. What would happen there, you would come back here and put in what is known as a rock slope and go down and hit that ore, connect with the old slope.

Q. Mr. Ball. you have described the various headings and stopes used in mining ore. I understand the technique in planning the headings has changed somewhat in the history of mining and the intervals between the headings have been changed. Is that right?

A. Yes, sir.

Q. Can you tell me what the intervals were when you first went underground approximately?

A. Seven feet.

Q. What are the intervals now?

A. 220.

Q. Have those intervals progressively gotten larger during the years?

A. Yes. When we first went on mechanical loading, we increased the intervals from 70 feet to about 140 feet, and then gradually increased them to 220 feet.

Q. There was one answer you gave to one of Colonel Harris's questions I didn't quite understand. I think your answer was that the rates for the different ocupations are different?

A. Yes.

Q. Now, have the rates for the same occupation always remained the same, or have they changed throughout the years?

A. They have been some adjustments and changes as we went from the handloading to the mechanical mining. Men who were previously known as muckers are called section helpers. There were some little adjustments in those wages, that is, relative adjustments.

Q. Yes, sir. I am not sure that I make myself clear. What I want to know is this: Has a drag operator, for example, ever since the mechanical loader was installed, always been paid at the same price, or have those rates varied throughout the years either up or down?

A. Well, his rate has been—the relative differential between his rate—

Q. No, I am not talking about that. I am talking about his absolute pay, the amount of wages he got.

A. Yes, the scale of wages has changed over the years depending on business conditions.

Mr. Brodie:

Thank you. That is all, thank you, Mr. Ball.

The Court:

Anything further?

Mr. Burr:
Have you anything?

Mr. Burr:
Yes, sir. I don't know whether Judge Smith has anything or not.

The Court:
Judge Smith?

(By Mr. Smith):
Q. Mr. Ball, your company didn't sign but one contract with the A. F. of L.—American Federation of Labor Union, did you?
A. Prior to what time, Judge?
Q. Well, the year 1939 there was a contract signed, on June 29, 1939, with the Red Ore Mine Workers. That was before the contract of 1940. As I understand, there was a contract signed in 1940. That was just before this act went into effect; is that a fact?
A. The first contract with the Red Ore Miners was signed, I believe, in October, 1939.
Q. This—
A. It was during the year 1939.
Q. Well, I will show you this to refresh your recollection. Here seems to be the copy signed by you and Mr.—
A. Vance.
Q. Mr. Vance?
A. Yes, sir.
Q. It gives the date of June 29th.
A. June 29th, yes, sir.
Q. That was signed by the Red Ore Miners. That was before—

The Court:
Is that in 1938 or 1939?

Mr. Smith:
1939.

The Witness:
June 29, 1939. As I remember Sam Roper signed this.

Q. They went under the name at that time of Red Ore Miners Union?

A. Yes, sir.

Q. And Mr. Roper, who is an officer of the A. F. of L. was an officer and signed this on behalf—

A. Yes, sir.

Q. —of the Red Ore Miners?

A. Yes, sir.

Q. Before that contract was signed, Mr. Ball, I believe they had a memorandum of a proposed—proposed changes in the contract. You referred to three discussions that you had with reference to the portal to portal proposition, I believe, in your testimony to Mr. Burr?

A. Yes, sir, with the Smelters Union.

Q. Now, in this proposed contract furnished by the Red Ore Miners Union, I see here this paragraph was in their proposal:

"That the workday shall begin when the workers have checked in at the portal and end when they check out at the portal. The workday shall not include the lunch hour."

A. I do not recognize that paper.

Q. Don't recognize it? The marks I have made on there in pencil are independent of that paper.

Mr. Burr:
We never had any agreement like this.

Q. Do you recall any discussion of putting in the portal to portal in the negotiation of this—

A. No, sir.

Q. —1939 contract?

A. No, sir.

Q. Now, there was another contract negotiated in 1940?

A. I believe so, a renewal.

Q. Just some time before this Wage and Hour Law went into effect; I think the first part of October?

A. I believe that is correct. I do not remember the date.

Q. Did you have any discussion with the Red Ore Miners Union with reference to the portal to portal at that time?

A. No, had no discussion.

Q. But in that contract you did have a provision why, if you had to put in the portal to portal, you made provision for that?

Mr. Burr:

What contract are you asking about?

Mr. Smith:

1940 contract.

A. I don't know which one you are referring to. Show me the contract.

Mr. Burr:

There was a contract made after the ruling.

Mr. Smith:

The contract wasn't made after the ruling. It was made just before the law went into effect, the last one.

The Witness:

There is nothing in that contract about portal to portal.

Q. Nothing in there?

Mr. Burr:

Just for your information, there is something in both the contracts—

The Witness:

The last one.—

Mr. Burr:

—negotiated this year.

Q. That was the last contract, signed in '40?
A. '41.
Q. The early part of '41?

Mr. Burr:

In May.

A. In May.
Q. There is something in there about that?
A. Yes, sir, there is something —

Mr. Burr:

We want the contract to speak for itself. We have the contract here if you want to offer it.

Mr. Smith:

It is in evidence.

Mr. Burr:

No, we didn't offer that. There was one with both unions. We will be glad to give them to them if they want them.

The Court:

I don't see the necessity of going into the '41 contracts.

Mr. Burr:

It will, I think, become relevant later.

The Court:

May be.

Mr. Smith:

Yes, sir. Well, we can get to that later on, if Your Honor please.

Q. So, you don't remember any memorandum when the 1939 contract was negotiated?

A. No, sir.

Q. Now, Mr. Ball, you have other officers or agents of the company that meet with these different unions and discuss their problems?

A. I have all my three superintendents who meet with their local committees at their division.

Q. When you referred to having three discussions with reference to the portal to portal proposition that was when you were present and having the discussion, was it?

A. Just give the time. I don't quite get your question.

Q. Well, at any of those three times you say you had a discussion with them.

A. I had no discussion—I presume you mean with the American Federation of Labor Committees regarding the portal to portal?

Q. Yes, sir.

A. I had no discussion with them regarding the portal to portal proposition.

Q. How about the C. I. O. union?

A. I mentioned the three times that question came up.

Q. And you never at any time mentioned the portal to portal when you were negotiating a contract with the Red Ore Miners in 1939?

A. No, sir. That question never came up. The contract they received at that time was practically the same as the one they had known as the contract with the Brotherhood of Captive Mine Workers. It was the same contract except they changed the name.

Q. Do you know what other officer or agent of your company conferred with or had any discussions with the Red Ore Miners Union?

A. I don't know; I don't know.

Q. You don't know?

A. I don't know who they could have discussed that with.

Q. You don't know whether they discussed it with anybody else that met with them with reference to the portal to portal?

A. Not signing any contract. Any discussion or proposal before signing a contract would be taken up with me and the committee.

Q. Yes, sir. But you don't know—you did have some other people that went out and discussed matters with reference to the contract and the relation between the company—

A. No, no.

Q. And between—

A. When there was a contract to be signed or to discuss the negotiations were between myself and the committee.

Q. And not discussed with anybody else?

A. I don't know what your committeemen—who they discussed it with.

Q. Your agents?

A. My superintendents have no authority to sign contracts.

Q. I am not talking about signing contracts.

A. My superintendents are my agents.

Q. I mean negotiations leading up to the signing of a contract; the proposal they offer and proposal you offer, any preliminary arrangements?

A. No; no preliminary arrangements are made prior to signing a contract—

Q. You don't have a discussion?

A. —except with myself.

Q. Except with yourself? You are the only man? Now, Mr. Ball, with reference to the check-in system, as I understood you to say in your direct examination, that they went to the bath house first?

A. Yes, sir.

Q. And then they went to the check house?

A. Changed clothes and then went to the mine portal and put their brass check in at the tally house.

Q. Brass check?

A. Yes, sir.

Q. Now, after they get their brass check there—

A. They don't get them. They deposit them.

Q. Deposit them. After those checks are hung on the—

A. Work board.

Q. —word board, those men are under the supervision of the company and subject to orders then and there?

A. They are only subject to supervision in regard to their behavior. We couldn't have—

Q. Aren't they—

Mr. Burr:

Let him finish.

A. We couldn't have any crowding and rough stuff in the skip as a safety measure.

Q. I am not talking about rough stuff. I am asking if you have any right to assign them to particular work—

A. The only instructions we—

Mr. Harris:

May I interrupt?

The Witness:

Pardon me.

Mr. Harris:

I think that calls for a conclusion on a point the Court has to decide.

Mr. Smith:

I want to see what it is so the Court can decide it,—give the Court some information.

Mr. Harris:

As far as our client is concerned—as I understand, he is not putting on his evidence, and I am not absolutely sure—

The Court:

In other words, it is a question for the Court to determine whether or not they had supervision—

Mr. Harris.

Supervision of the company.

The Court:

—at any particular time.

Mr. Harris:

Yes, sir. So bring out the facts.

The Court:

Bring out the facts.

Q. Well, I will ask you, suppose after he hung up his check on the hook and was on his way to the man skip or on the way to get his carbide—

Mr. Burr:

He gets his carbide before he catches the skip.

Mr. Smith:

I know, but I am talking about the time he hangs up his check—

The Witness:

He doesn't hang up his own check.

Q. I know you have an officer—a man standing behind who hangs it up.

A. I am just correcting you. He don't hang up his check.

Q. Let's don't get technical. We understand you have a man there and he hands the check to him and the man puts it on the board. That is a fact?

A. Certainly.

Q. Let's get away from that. Any time he goes out after that, after he puts his check on the hook, the company can direct where he should go and what he should do around that mine?

Mr. Harris:

We object to that question. We are not interested in what they can do. We are interested in what they do do.

The Court:

Let's get what they do do.

Q. I will ask you what they do with reference to whether they shall perform duties before they go in the mantrip or after they get in the mantrip they are instructed as to any duties they shall perform?

A. In the mine.

Q. They perform no duties at all before they get in the mines?

A. No.

Mr. Harris:

We object to that question. It involves a conclusion.

Mr. Burr:

We don't object to it.

The Court:

I sustain it.

Mr. Smith:
What is the ruling?

The Court:
I sustain it.

Mr. Burr:
You don't sustain it as to us? We don't object to it.

The Court:
I sustained the objection. You know who made that objection.

Mr. Burr:
All right, sir.

Q. Now, in that rule book that Mr. Harris was asking you about with reference to the conduct of the miners, rules that he has to abide by, your rules cover his conduct after he gets on the company's premises, don't they?
A. We have general plant rules.
Q. They apply to him? If he misbehaves you can fire or penalize him or anything you wish, can't you, before he gets to the skip?
A. It depends on whether he violates the law of the community.
Q. I say the rules of your company.
A. We have plant rules, yes, sir.
Q. Those govern him from the time he comes on your premises?
A. No, sir.
Q. From the time he hangs up—your man hangs up his tag; how about that?
A. No, sir.
Q. No rule?
A. The only rules we have is good conduct before he loads into that skip. That is a safety measure. We will not have any pushing or shoving.

Q. You regulate him until he gets to the mine?

A. He would be refused admittance to the mine if he pulled any of that stuff.

Q. You have a rule in there if he had a fight you can fire him or lay him off?

A. If he had a fight he would probably be arrested by the local officers.

Q. You have a rule, don't you?

A. We have a rule, yes, sir, in the rule book.

Q. Now, let me get this straight and I will be through, Mr. Ball. With reference to the A. F. of L. as to when they came into the picture as a union down there, when did you first deal with them as the A. F. of L. affiliates?

A. I believe they wrote the management a letter stating they wanted a new contract; that they had changed the name of their organization and had become affiliated with the American Federation of Labor. I believe that is a matter of record.

Q. That was some time after they signed the 1939 contract?

A. No, sir, that was prior to signing the 1939 contract.

Q. When the '39 contract was signed, it was signed as the Red Ore Miners Union?

A. The Red Ore Miners Union is an affiliate of the American Federation of Labor.

Q. But before they became an affiliate, did they have any—

A. They were called the Brotherhood of Captive Mine Workers.

Q. You don't know who the A. F. of L. were composed of at the time of their organization, as to what class of labor down there, do you, how they had been affiliated before that time?

A. The same committees who acted in the Brotherhood of Captive Mine Workers informed the management through myself that they had changed the name of their organization and had become affiliated with the American

Federation of Labor. They were the same people, the same committeemen.

Q. Now, in this last—in the '39 contract, it was signed as the Red Ore Miners Union by Mr. Roper, who was in fact president of the Alabama Federation of Labor?

A. I think that was the first contract.

Q. Now, in the next contract—that contract was signed as an A. F. of L. Union?

A. I don't remember whether it was or not. I think they are still known as the Red Ore Miners Local. That is what the understanding is when we have our meetings with them.

Mr. Burr:

You are probably talking about the contract made in May of this year.

Mr. Smith:

The contract made May 9th.

Mr. Burr:

1941?

Mr. Smith:

Yes, sir.

Mr. Burr:

If he wants to offer that contract, we have no objection. We didn't offer it because we didn't think at that time it was material.

Mr. Smith:

We don't offer it. It was after May 1, 1941.

Mr. Burr:

We think it is relevant.

Mr. Smith:
You can introduce it.

Mr. Burr:
Don't ask about it if you are not going to offer it.

Mr. Smith:
Mr. Burr, I am not asking about the contents of the contract. I am trying to fix the status of the A. F. of L. as to which there is some confusion.

Mr. Burr:
I don't think there is any confusion about it at all.

Mr. Smith:
There may not be to you.

Mr. Burr:
I am not bragging.

The Court:
It was formerly the Captive Miners?

The Witness:
Yes, sir, the organization known as the Brotherhood of Captive Ore Mines changed their name to the Red Ore Miners Local and became affiliated with the American Federation of Labor.

Mr. Smith:
That is what I am trying to get straight. My mind may not work as fast as some of these gentlemen's.

That is all.

The Court:
Is that all for Mr. Ball?

Mr. Burr:

I have some questions on re-direct.

The Court:

All right.

Re-Direct Examination.

(By Mr. Burr):

Q. Mr. Ball, in reference to negotiations for contracts with your employees, do all those matters come to you?

A. Yes, sir, they start—

Q. Start with you?

A. Yes, sir.

Q. And after discussing it with them you take them up with the—

A. Manager of Industrial Relations.

Q. —Manager of Industrial Relations, and if necessary, do you go higher to the president of the company?

A. Yes, sir.

Q. And that is the way the policies are determined and worked out?

A. Yes, sir.

Q. Your superintendents don't negotiate them or have anything to do with carrying the negotiations on or reaching the ultimate decision?

A. None whatever.

Q. And you sit in or do you sit in in reference to it from the time it starts until it is concluded?

A. I do.

Q. You referred to—I will run over this as rapidly as I can. In answer to Mr. Harris' question about the plants you have supervision over, you referred to the ore mines and the Number 5 Limestone mine and the dolomite quarry. What kind of mine is the dolomite quarry, and where is it located?

A. An open pit quarry.

Q. An open pit quarry?

A. Yes, sir.

Q. And where is it located?

A. About a mile southeast of Bessemer,—southwest of Bessemer, it is.

Q. You were asked by both Mr. Harris and Mr. Brodie some questions in reference to the way the mines were started back in, I think you said, as far back as in the seventies, probably, when mining first started.

Could you give us the approximate date,—not the exact date of any mine, but the approximate date when the use of mining by the slope and the modified pillar and stope system that you have described,—when did that approximately begin in general use?

A. 1915.

Q. In 1915?

A. Yes, sir.

Q. When did you begin installing in the Tennessee Company's mines the mechanical loading system?

A. 1915.

Q. And when was that entirely completed?

A. 1923.

Q. All right, sir. Now, since that time has the system in mining been substantially the one you described to Colonel Harris yesterday?

A. It has.

Q. That is the one—

A. I rubbed that one out.

The Court:

When did you say that machine mining started? In 1917?

Mr. Burr:

Started in 1915.

The Witness:
'15.

The Court:
And completed in 1923?

Mr. Burr:
Yes, sir.

The Witness:
That is right.

Q. That includes the iron ore mines as well as the limestone mine?

A. Yes, sir.

Q. I see. All right, sir. Now, you were asked yesterday about the various appliances and tools that were used by the miners. As I recall it, you named the tripod drill and the drill steel that operates with that drill which came in the sizes you have told us about, and the jack-hammer with the short steel?

A. Yes, sir.

Q. And the wedges, the C-hooks and the hangers?

A. Yes, sir.

Q. And the skidder block?

A. Skidder block.

Q. That is a part of—the air pipe hose and the rubber hose?

A. Yes, sir.

Q. And the quarrying bar?

A. Yes, sir.

Q. That is, as I took them down, what you were asked about?

A. Yes, sir.

Q. Now, I will ask you if all those appliances and tools are the ones that used in the working place in producing the ore?

A. Yes, sir, at the working face.

Q. At the working face?

A. Yes, sir.

Q. And none of them are used anywhere else but the working face?

A. Your quarrying bar is used all over the mine.

Q. I know, but the ones you mentioned and described on yesterday are those that produce the ore?

A. Yes, sir.

Q. The quarry bar is used for testing the roof?

A. Yes, sir, and taking down—

Q. Loose rock?

A. Yes, sir.

Q. Now, I want you to explain to the Court how, prior to May 1, 1941, the company provided those tools for the men who used them. For instance, let's take up the tripod drill. Where was that tool placed and by whom was it placed?

A. It was originally put in the heading by company men. It was lowered down in the mine on a material trip.

Q. All right, sir. Now, in reference to the drill steel.

A. The same way, lowered in the mine on a material trip and carried to the place by locomotive haulage.

Q. The jackhammer and short steel?

A. The same thing.

Q. The wedges, C-hooks and hangers and skidder blocks?

A. The same way as the—

Q. The air pipe—

A. By the material crew.

Q. The air pipe and rubber hose?

A. The same way; all material, timber, rails,—

Q. Timber and rails?

A. Yes, sir.

Q. Were the men required to transport any of that material to the working place?

A. They were not.

Q. Could you name the composition—I mean the number of the crews that handle that? What do you call them?

A. Oh, they are called service crews.

Q. Service crews?

A. Generally six or eight men under one foreman.

Q. Where did the service crew get this material from? Start with the beginning and tell us—

A. At the bottom of the mine. The material was handled into the mine to the mine slope by what are known as material handling crews. After the material reached the bottom and was unloaded at the material handling point, then the service crews—

Q. Let's stop there. I will go back a little further. The material came down the main haulage way?

A. Yes, sir.

Q. Who handled that?

A. The material foreman.

Q. Where did the material foreman get it?

A. Got it at the mine portal. If they were timbers they came from the timber yard, and drill steel from the blacksmith shop by truck, and the other supplies from the supply house by truck.

Q. Would the same crew who had charge of taking it in the mine bring it up to the portal of the mine?

A. No, sir.

Q. What men had charge of bringing it to the mouth of the mine?

A. The surface crews.

Q. The surface crews?

A. S-u-r-f-a-c-e.

Q. They never go in the mine?

A. No, sir.

Q. You have a foreman of the surface crew outside?

A. Yes, sir.

Q. And he looks after delivering all needed material to the mouth of the mine?

A. Yes, sir.

Q. Then it becomes the duty of the service crews to haul it down in the mine?

A. That is right, the material handling crew.

Q. After the material handling crew have delivered it down into the mine, where do they put it?

A. They unload it at the material handling point which is in the vicinity of the man unloading station.

Q. How far from it?

A. From 25 feet to 100 feet. It varies depending on the location of the man unloading station.

Q. After all this material is taken there, how is it distributed?

A. The service—s-e-r-v-i-c-e—foreman and his crew of six or eight men load this material on tram cars and it is hauled to the working places by the electric locomotives and it is there unloaded.

Q. Unloaded there for the use of the men?

A. Yes, sir.

Q. Who is it unloaded by?

A. Service crew.

Q. And taken right into the working place?

A. Yes, sir.

Q. Now, if there is any repairing or resharpening of the steel or equipment that is taken in that way, how is that handled?

A. The miners put it on the car, and then the service crews come and pick that up and carry it back to the material unloading point and it is taken out of the mine on a material handling trip.

Q. You say the mine crew put it on the car?

A. Yes, sir.

Q. What car or whereabouts?

A. On the tram car. They will throw the steel on a tram car.

Q. Where is the tram car?

A. Right there at their working place.

Q. Right there at their working place?

A. Yes, sir.

Q. Is that work done within the eight hours that they are paid for?

A. It is.

Q. All right. After it is carried out, any material that needs resharpening or repairing is carried outside, how does it get back inside? The same way it got in originally?

A. Just reverse the operations. The surface crews take it from the mine entrance to the blacksmith shop and bring it back.

Q. Your service crews handle it getting it out to the mouth of the mine?

A. Yes, sir.

Q. Over what period of years has that custom been in observance in your mines of handling it that way?

A. Oh, a great many years. Whenever you have an underground mine you must take material in at all times. The amount of material we take in now is greater than in previous years due to the fact our mine workings have increased and the number of working places have increased since we went on the system of mechanical loading in 1915. So, I would say our general practice today is similar to what it was in 1915 with reference to handling material.

Q. So that same system, of course, increased, or in times of depression may be decreased, has existed ever since you have been there?

A. Yes, sir.

Q. I believe you said—I think you cleared this up later,—that whenever the mine foreman learns that there is a vacancy in a crew by some man not checking in by depositing his brass check he supplies that from the service crew after he goes down in the mine?

A. Yes, sir.

Q. And, of course, when that man is supplied, the first day he necessarily gets to the working place late?

A. He would have to.

Q. His time runs that day just as if he had been a service crew man?

A. Yes, sir.

Q. But if he stays on the job the next day and succeeding days, he then takes the occupational rate—

A. The occupational rate.

Q. And the time of the other man?

A. That is right.

Q. And he doesn't, on the second day, have to report or go to his place where he would have gone as a service man and wait until he is sent back?

A. No, sir. His foreman or head miner would tell him before the shift was over he would want him for the next day.

Q. I see. Do you recall Exhibit Number 12 there? It is the minutes of the meeting that you held when the objections of the Smelter Union to the incentive plan were under discussion.

A. Yes, sir. I believe that was on June 10, 1936, some time in June.

Mr. Burr:

Will you let me have that exhibit, please, sir?

(Thereupon a paper was handed to Mr. Burr by the Clerk.)

Q. Referring to this exhibit, which is T. C. I. Exhibit Number 12, on page 15, that Mr. Harris referred to on yesterday, the Union's objection to the matter was stated this way:

"Day's work to consist of eight hours, 6:30 A. M. to 2:30 P. M. and 6:30 P. M. to 2:30 A. M., with no time off for lunch."

What had been the hours? Had the hours been different from that or not? If so, in what way had they been different from what the union asked?

A. The first ones get in around 6:30 or 7:00, and the first ones came out about 3:15.

Q. When did the work begin in the mine?

A. 6:45.

Q. 6:30 A. M. to 2:30 P. M. would be how many hours?

A. With the lunch period—

Q. It is eight hours with no time off for lunch?

A. No time off for lunch.

Q. So the only suggestion they made was to allow them to have lunch?

A. Not take lunch.

Q. And your answer is:

"Our answer to that is no. Our men go in the mines about 6:05 A. M., and they get to their working places about 6:45 A. M."

What did that cover?

A. That covered all the men in the mines.

Q. Not one individual at all?

A. No, sir.

Q. In other words, the first skip began at 6:05?

A. Yes, sir.

Q. And the last skip—

A. So all the men were at their working places at 6:45.

Q. That was the arrangement and has always been the arrangement?

A. Yes, sir.

Q. Now, you were asked yesterday in reference to the figures that you have placed there again on the other side of the board this morning. You showed more in detail how the 100 percent or 168 tons, under the incentive plan, was arrived at, and how you took 80 percent of that for the performance part, and that the men's incentive earnings began at that point. You were asked on yesterday what the company would do if, instead of getting the 168 tons or 134.4 tons, if the crew produced only 40 tons. I believe you said you would investigate or your superintendents would investigate to see whether that was due to causes beyond the control of the men?

A. That is right.

Q. I will ask you to state what would be the policy of the company if a 7-man crew had produced only 40 tons without any excuse for the reduced amount?

A. Well, I don't know. I wish you would state that question again.

Q. Well, if anything like that has happened—I will ask you that—if any crew has produced as little as 40 tons a day without there being any excuse beyond their control?

A. There is always some excuse for a mine crew not producing their tonnage.

Q. Suppose they didn't have an excuse and a crew consistently produced a great deal less than the amount at which the incentive earnings start; what would be your policy under those conditions, or what would be the company's policy?

A. Well, we have certain places the men in them are not as good as men in other working places.

The Court:

Mr. Ball, I can't hear you.

Q. We can't hear you.

A. We have certain places in which the men in those working places are not as good miners as men in other

working places. We would endeavor to teach those men the proper way to do their work so they could bring their earnings up to a higher point.

Q. That is to the interest of the company and the men?

Mr. Harris:

That is argumentative.

Q. Is it to the interest of the company? Are you interested in getting more production?

A. Yes, sir.

Q. And are you interested in seeing the men earn incentive pay?

A. We are. We are always very glad to see the men earn above the guaranteed wage because we are getting more production.

Q. Do you recall how much the earnings of the men were in 1940 above the guaranteed wage?

A. I think it was an average on Red Mountain of about 5½ percent.

Q. For each man?

A. Yes, sir.

Q. Above the guaranteed wage?

A. Yes, sir.

Q. Has there been any—Since that plan was put on trial under what is referred to as the Governor's agreement, has it been in existence and on trial since then?

A. It has. We have never heard anything about it after the first two or three pay days.

Q. Have there been any requests to go back on the nine man crew plan, or has there been perfect satisfaction?

Mr. Harris:

We object to the perfect satisfaction. He can ask have they objected.

The Court:

I think so.

Mr. Burr:

I will put it that way:

Q. Have they ever objected and complained about the incenti plan as a plan?

A. Not as a plan. There have been some requests for rate changes here and there.

Q. And some changes have been made?

A. Some changes have been made, yes, sir.

Q. How has the incentive plan worked out for production, contrasting the old nine-man crew with the present seven-man crew system? Have the seven men produced more or less or equally as much ore as the former nine-man crew?

A. As a general rule, more.

Q. Sir?

A. As a general rule, more.

Q. As a general rule, more?

A. Yes, sir.

Q. That is what the record shows?

A. Yes, sir.

Q. I believe you said the nine-man crew had grown up during the time of the depression?

A. Yes, sir.

Q. When you were trying to spread the work as much as you could?

A. Yes, sir; that is right.

Q. Was this incentive plan, the final details of it, worked out within a short time, or was it under study and consideration for a long time?

A. It had been under consideration for several years. It started—

Q. During that several years it was being considered, were any tests or surveys made in order to find the base?

A. Oh, yes. Time studies were made of our own individual mines, and other incentive systems in other mines were investigated by myself and by my superintendent.

Q. Did the industrial engineering department of the company make an investigation of it too?

A. Oh, yes.

Q. And the incentive plan was the result of several years of study?

A. Yes, sir.

Q. Do you remember when you began considering that incentive plan?

A. In 1934.

Q. Did you and your superintendents visit other mine fields?

A. Yes, sir.

Q. What fields?

A. The mine fields in the north, Michigan and Wisconsin and Minnesota.

Q. Do you remember who went up there?

A. Mr. George Neal and Mr. Ewing Carter and myself.

Q. And yourself?

A. Yes, sir.

Q. Now, I will ask you to state whether or not under the incentive plan the production per man hour has increased?

A. It has.

Q. I will ask you whether or not under the incentive plan the wages per man hour have increased?

A. Greatly.

Q. Now, you were asked the question if the height, if you call it that, of the covering didn't increase as the slope went further down. Of course, it does increase. That naturally follows, doesn't it?

A. Yes, sir. It increases until you reach the basin, and then in some of our mines—it depends on the contour of the surface,—

Q. That is right, and—

A. —and the dip of the ore and the faults you encounter after you reach the basin.

Q. And I believe you stated to both of these gentlemen on cross examination the deeper the workings, both the main slope and the headings, the distance becomes greater for the men to travel?

A. Yes, sir.

Q. So, as a result of that, if a mine has its workings closer to the top than a mine whose workings are further away from the entrance, why, the latter mine, its men have greater distances to be transported, of course?

A. They do in deeper mines.

Q. Well, does the cost to the latter mine also increase as the mine goes deeper underground in the way of increased trackage and things of that sort?

Mr. Brodie:

I object to that.

The Court:

Sustained.

Mr. Burr:

We except.

Q. As an illustration—are you acquainted with the Spaulding mine of the Republic Company in a general way?

A. In a general way. I have not been in that mine in a great many years.

Q. Well, assume in the Spaulding mine the men only have to travel—I will make proof later on; I am asking him as an expert. Assuming in the Spaulding mine the men have to travel and walk, say, only 100 or 200 feet; that is a much less distance than they have to travel or walk in any of the ore mines of the Tennessee Company; is that true?

A. Yes, sir.

Q. And, of course, the time spent in traveling would be much less?

A. Yes, sir.

Q. The Republic Company is a competitor of the Tennessee Company in the sale of its products, isn't it?

Mr. Brodie:

We object.

The Court:

Sustain the objection.

Mr. Burr:

We except. We will ask Your Honor to hear us on that later in connection with other witnesses.

I might state, however, in trying to find out the intention of Congress, if there is any doubt, the question of unfair competition is not only a base, but the main base.

The Court:

Find out what these folks do and what the other folks do.

Mr. Burr:

I believe Your Honor is right. I can develop that by the Republic witnesses.

The Court:

Do that.

Mr. Burr:

I can do that better by the Republic witnesses. I believe Your Honor is right about that.

The Court:

Go ahead.

Mr. Burr:
Just a minute.

The Court:
I want to ask Mr. Ball one question.

Mr. Burr:
Go ahead, Judge.

The Court:
Mr. Ball, as you go down into these mines do you carry these men to the unloading platform?

The Witness:
Yes, sir.

The Court:
What is the difference between the fartherest distance a man has to go, the fartherest working place,—what is the difference between his time and the time of the nearest working place from that unloading station?

The Witness:
A difference of about 27 minutes and 9 minutes.

The Court:
The nearest is about 9 minutes?

The Witness:
Yes, sir.

The Court:
And the fartherest about 27?

The Witness:
27.

Q. Is that one way or both ways?
A. Each way.

The Court:
That is each way?

The Witness:
Yes, sir.

Mr. Burr:
I want Your Honor to get that.

Q. Of course, that varies; those are averages you gave?
A. Those are average distances?
Q. And yet each individual—
A. No, that is actual.

Mr. Harris:
No; no; the Judge didn't ask you about averages. He asked about actual.

The Witness:
I corrected myself.

The Court:
I asked about the nearest and fartherest.

Mr. Burr:
That appears on the map, Judge.

The Witness:
Yes, sir.

Q. That is marked on each map for each working place?
A. Yes, sir.

Mr. Burr:

Just one or two more questions, Your Honor, and I think I am through with him.

Mr. Smith:

That is each way, Mr. Ball, the answer that you gave to the question of the Court, I believe?

The Court:

One way.

The Witness:

One way.

Mr. Burr:

One way.

Q. In carrying this material into the mine by the material crew—I am talking about when they carry the material from the entrance of the mine down to the material depot near the manloading or unloading station—

A. Yes, sir, I understand.

Q. —is that hauled by those material crews between two regular productive shifts or during the shifts?

A. That is handled between the mine shifts.

Q. While men are not at work?

A. Yes. sir. You might say while we are not hoisting ore.

Q. While you are not hoisting ore?

A. Yes, sir.

Q. You stated to Mr. Harris that the company determines who shall and shall not enter the mines. State whether or not you determine as to what skip each individual miner shall go down on or not, or is that a matter the miners themselves determine and have worked out for themselves?

A. That is a matter of their own choice.

Q. In going down on those skips—take a producing crew for instance a 7-man crew. His boss when he gets to his work,—his boss is who? The head miner?

A. The head miner or timber foreman.

Q. It will be the head miner for the productive crews?

A. Yes, sir.

Q. And for the timber crew it will be the timber man and so on?

A. Yes, sir.

Q. But I am confining it to the productive crew of 7 men. In going down into the mine does the head miner ride down with his crew? Do they assemble in a body?

A. As a rule the head miner and drill man take an earlier skip because it is necessary for those men to go into the working place and inspect it for loosened material on the roof,—rock.

Q. Has that head miner any duties to perform with reference to his crew on the skip?

A. None whatever.

Q. Or while they are walking from the manloading station to the working place?

A. No, sir.

Q. His bossing begins at the working place?

A. Yes, sir.

Q. You said something about, in answer to Judge Smith's question, that you do enforce good conduct rules while riding on the skip?

A. Very necessary.

Q. Is that done all over the plant premises?

A. Yes, sir.

Q. These inspection gentlemen,—of course, I know they wouldn't be guilty of anything like that,—but if there were down there inspecting the mine and did something that was unsafe or improper you would check them on it?

A. Their attention would be called to it.

Q. Mr. Harris asked you about the Mutuality Committee which you say was organized in 1917, and the Employees Representation Plan, which was formed in the spring of 1933, and changed in 1934 to the Industrial Relations Plan, and then, as the question was put, petered out in the fall of 1934, I believe you said.

A. Yes.

Q. Now, I want to ask you this question: Not did the company hold meetings with reference to how the things were organized, but were meetings for the consideration of grievances and complaints and suggestions on the part of employees held between committees of those three organizations, the Mutuality Committee, and the Employees Representation Plan and Industrial Relations Plan?

A. You mean were meetings held between these committees and the management?

Q. Yes, sir.

A. Yes, sir.

Q. And in the same way you afterwards held them—

Mr. Harris:

We object to him leading the witness.

Q. And in the same way you afterwards held meetings with the committees of the Union?

A. In exactly the same manner.

Q. There were no unions in 1917 or in 1933 when the Mutuality Committee or the Employees Representation Plan were organized?

A. Not on Red Mountain.

Q. Not on Red Mountain. Were minutes kept of those meetings—

A. I didn't catch the question.

Q. Were minutes kept of those meetings just like you did later of the other meetings?

A. I believe so.

Q. I will ask you to state whether or not during that time any member of the Mutuality Committee or Employees Representation Plan or Industrial Relations Plan, —did any of those committees or members ever suggest or ask or request that any change be made in the basic eight-hour working place plan?

A. No.

Q. Wasn't brought up at all?

A. No, sir.

Q. Has any individual employee ever come over this period of time with any request for any change as far as he was concerned? I am talking about a man that may not be represented by either of these unions. Has any individual employee during this period of time ever asked that the basis of computation and payment of pay be changed from the working place to working place plan?

A. I don't see how I can answer that question.

Q. Well, you have got some employees out there that don't belong to any union?

A. I don't know.

Q. You don't know?

A. I don't have a list of the union membership.

Q. Has any individual employee who didn't represent himself to be a member of a committee ever taken this matter up with you on his own behalf?

A. No.

Q. The only time it has been taken up has been the time you have mentioned and in the ways you have mentioned?

A. That is correct.

Q. Now, you were asked as to whether or not you received orders to cooperate with the Smelters Union. You said no. Did you receive any orders from above not to cooperate with the Smelters Union?

A. I did not.

Q. I believe you stated that upon the settlement of the strike of 1934 under the letter of understanding that you testified about, that the mines—most of them remained in operation only for a short time?

A. That is correct.

Q. Do you know whether or not—

A. There was only one mine operated at each division during the depression.

Q. During the depression?

A. Yes, sir.

Q. I will ask you to state was that the time of what we call the acute time of the depression?

A. It was.

Q. Were the furnaces down?

A. A great many furnaces were down.

Q. Was that condition true all over the Mountain and all over the Nation as far as you know?

A. Yes, sir.

Q. Work at that time was down to a minimum?

A. Yes, sir.

Q. And you were trying to scatter it as much as you could?

A. We did that at the request of the government. All industry tried to spread the work.

Q. Well, you were asked by somebody as to whether or not you ever met with your employees in discussing the company's business in the union hall. You didn't, I believe you said?

A. No, we never discussed our business in the union hall.

Q. You meet with everybody in reference to the company's business on the company's property and in the company's offices?

Mr. Harris:

We object; that is going far afield.

Mr. Burr:
I am just traveling with him a little bit.

Q. These meetings were held in the company's offices?
A. Yes, sir.
Q. You hold them there now?
A. Yes, sir.
Q. And expect to hold them there in the future?

Mr. Quinn:
We object to the expectation.

The Court:
Sustain the objection.

Mr. Burr:
All right. I will not go any further.

The Court:
All right. Anything else for Mr. Ball?

Mr. Burr:
Just a minute. I will check with Mr. All.

Mr. All:
He has asked everything I had in mind except possibly one question.

(By Mr. Burr):
Q. I don't know whether I asked you this on yesterday or not, Mr. Ball.

Mr. Burr:
If I have, it is because I have forgotten it, Your Honor.
Q. Do you recall when there came to your notice for the first time any claim on behalf of either of the unions that they were claiming that the company owed back pay

for travel time? Do you know when that question first came up?

A. I do not remember the date.

Q. Do you remember—

A. It was some time after the passage of the Act.

Q. Do you recall whether or not it followed the—do you recall seeing in the papers notice of a decision in what was called the Cornucopia Gold Mines Company case?

Mr. Harris:

We object to that.

Mr. Quinn:

We object to what he saw in the papers.

Mr. Burr:

I am just fixing the date.

The Court:

I think you brought out yesterday when you got the communication.

Mr. Burr:

We allege in the bill, for the purpose of fixing the date, this question was raised after the announcement of the Administrator's Ruling in the Cornucopia Gold Company case.

We think it is going to be important to prove that in this case before we get through.

Mr. Harris:

Are you through?

Mr. Burr:

No.

Mr. Harris:
Excuse me.

Mr. Burr:
I want to ask him if he saw it in the papers without going into the contents of it, and then I want to ask him if a short time after that the union raised this question. It is clearly admissible.

The Court:
I am going to admit it. I will overrule the objection.

Mr. Brodie:
Will Your Honor hear me on that?

The Court:
What?

Mr. Brodie:
Will Your Honor hear me on that?

The Court:
No. I will give you an exception.

Q. Mr. Ball, was it shortly after—

Mr. Harris:
I object to leading him.

Mr. Burr:
I am not trying to lead him.

Q. Was it before or after the announcement of that case appeared in the papers you first heard of this claim of the Union for time and a half for overtime and for the travel time.
A. It was after.

The Court:
Is that all?

Mr. Burr:
Mr. All wants to ask him one question.

Mr. All:
No, sir; I will not ask anything.

Mr. Burr:
That is all, Your Honor, then.

The Court:
Anything else?

Mr. Harris:
There is one question that has come up with us here, and I don't know whether we will want to ask him or not.
Now, is Mr. Ball going to be here this afternoon?

Mr. Burr:
We are going to keep him right here.

The Court:
He is going to be here all the time?

Mr. Burr:
Yes, sir.

Mr. Harris:
I will have to discuss with these gentlemen during the noon hour, or tonight, just one little item, whether I want to go into it.

Mr. Burr:
We would rather know that before we put on our other testimony.

Mr. Harris:
It is not anything new at all. It is a question of whether it is clear.

Mr. Burr:
Can't you find out during the recess?

Mr. Harris:
I don't think I can.

The Court:
Can't the reporter go over it with you?

Mr. Harris:
I think not.

Mr. Brodie:
Your Honor, in connection with the objection I made—

The Court:
I am through with that. I have ruled on that.

Mr. Brodie:
I understand the rules require me to state the grounds of my objection.

The Court:
I think when I rule like that you have the advantage of stating your objections when I tell you I don't care to hear from you.
Anything further?

Mr. Burr:
That is all.

The Court:
It is about adjourning time.

Mr. Burr:
What time?

The Court:
Be back—What time is most convenient for everybody?

Mr. Burr:
I would suggest, if Your Honor please, in order that we may expedite the matter, we have a little extra time,—say two o'clock.

The Court:
We will adjourn until a quarter to two.

Mr. Burr:
Quarter of two, yes, sir.

The Court:
Be here in the Court Room at a quarter of two.

(Whereupon, at 12:00 M., July 10, 1941, a recess was had until 1:45 P. M., of the same day.)

After Recess.

1:45 P. M.

The Court:
Who will you have for the next witness?

Mr. Harris:
I have no further questions for Mr. Ball at this time.

The Court:
I thought we would have a new witness.

Mr. Burr:

Yes, sir. I will take Mr. Cameron.

1031 C. B. CAMERON, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Burr):

Q. Mr. Cameron, what are your initials?

A. C. B.

Q. And what is your present position with the Tennessee Coal, Iron & Railroad Company?

A. Superintendent, Ishkooda Division.

Q. How long have you been Superintendent of that Division?

A. Since January 15, 1924.

Q. Now, prior to that time were you connected with the Tennessee Company?

A. I went to work with the Tennessee Company in September, 1910.

Q. Was that the first company you worked for?

A. No, sir. I worked for the Cheno Copper Company in New Mexico a short time after I graduated from college.

Q. What college did you graduate from?

A. Michigan College of Mines.

Q. What degree—

A. B. S. in Industrial Engineering and Engineer of Mines.

Q. After graduating you went to New Mexico?

A. Yes, sir; Cheno Copper Company.

Q. Are they underground mines?

A. Yes, sir.

Q. And came with the Tennessee Company in September of what year?

A. 1910.

Q. 1910?

A. Yes, sir.

Q. In what capacity did you first work for the Tennessee Company?

A. I was division engineer of the brown ore mines.

Q. Brown ore mines?

A. Yes, sir.

Q. Where were they located?

A. At Greeley and Champion.

Q. Champion is in Blount County?

A. Yes, sir.

Q. And Greeley in Tuscaloosa County?

A. Yes, sir.

Q. Were they open pit mines or underground operations?

A. No, sir; open pit mines.

Q. Open pit mines?

A. Yes, sir.

Q. How long were you engineer of those mines?

A. I was engineer there for about four months and the mines shut down in 1911, and I was gone about a year and came back in 1912 as Division Engineer at Wenonah, known then as Fossil.

Q. Came back as Division Engineer at Wenonah?

A. And Ishkooda.

Q. How long did you remain as Division Engineer?

A. Until 1922 when I was made Chief Engineer located at Muscoda.

Q. Having jurisdiction over—

A. All ore mines and quarries.

Q. That was in what year?

A. 1922.

Q. And then you were made Superintendent at Ishkooda?

A. Yes, sir.

Q. And have been there ever since?

A. Yes, sir.

Q. In that period of time have you been familiar in a general way with the ore mine operations on the mountain?

A. Yes, sir.

Q. Those are the operations of Woodward and Sloss and so forth?

A. I have been in the Sloss Mines and Woodward Mines and Republic Mines, but it has been quite a number of years ago.

Q. The situation—you heard Mr. Ball's testimony, I believe?

A. Yes, sir.

Q. You were here when he was on the stand?

A. Yes, sir.

Q. The situation he testified about as to the general locations of the mines on the mountain is correct?

A. Yes, sir.

Q. There is no use going over that again with you?

A. No, sir.

Q. All right. What are the numbers of the mines you had and have supervision over at Ishkooda?

A. Number 11 and Number 13 at the present time.

Q. Well, suppose we take Number 13 as illustrative of the mines under your supervision and take you through that. That seems to have been used in cross examination in some of the questions.

Just about where is 13 located, the entrance of it, in reference to being nearer or further out from the City of Birmingham than any of the other mines?

A. It is closer to Birmingham, about seven miles from Birmingham, about a mile and an eighth from Powderly on the South Bessemer car line.

Q. Then, going down the mountain towards Bessemer you come to the other company mines?

A. Yes, sir, number—

Q. On down until you get to the Muscoda Group?

A. Yes, sir.

Q. And if you went on further you would go from Muscoda to Raimund of the Republic Company?

A. Yes, sir.

Q. This Number 13 mine, can you tell us about how many feet below the surface the main haulage way or slope has been driven, confining my questions for the present, Mr. Cameron, to the date of May 1, 1941? About how deep had that slope been driven at that time?

A. About 4700 feet.

Q. Had it reached the basin?

A. Number 13 has not reached the basin.

Q. Has not reached the basin?

A. No, sir.

Q. Now, I wonder if you could tell us roughly, as well as you can recall it, at what depth that slope was when you went there as Superintendent, just to give us some idea how far it has been driven since you have had charge of it?

A. I don't know exactly, Mr. Burr. I—

Q. Just a general idea?

A. About 3500 feet, I would say, was the bottom of it when I went to Ishkooda.

Q. That is just your recollection? The map will show?

A. The map will show. That is just my best recollection.

Mr. Harris:

When did he say he went to Ishkooda?

Mr. Burr:

In 1924.

The Witness:

Excuse me a minute. You mean when I went to Ishkooda as Superintendent, n Division Engineer?

Q. Yes, sir. Well, could you give us some idea about how deep it was when you were there as Division Engineer?

A. When I went there as Division Engineer they were driving through the fault Mr. Ball explained this morning. I believe the fault of number 13 was about 1800 feet.

Q. From the portal?

A. From the portal.

Q. That was in what year?

A. 1912.

Q. When you went there in 1912 as Divisional Engineer could you give us some idea about the number of headings you had at that time?

A. In '24?

Q. Yes, sir,—no, in 1912?

A. In 1912?

Q. Yes, sir. This is the first time you have been asked these questions?

A. I would have to guess at that, Mr. Burr.

Q. Just as best you can?

A. 25 or 30.

Q. 25 or 30?

A. Yes, sir.

Q. How many headings were in operation and being worked—well, say about May 1, 1941?

A. There were eight in operation at that time.

Q. Eight?

A. Yes, sir.

Q. Those headings, of course, as Mr. Ball explained, turned off at right angles from the main slope; is that right?

A. Yes, sir.

Q. And the stopes or working places turned off at right angles from the headings?

A. Yes, sir.

Q. Could you give us your best or approximate judgment at the same time I have been inquiring about as to how far from the main slope, we will say, the longest heading was? How far was that distance, the one that had been extended the longest at that time, as best you remember?

A. Approximately 4000 feet.

Q. And the shortest, what would be your approximation of that?

A. Somewhere between 500 and 1000 feet. That is from the slope?

Q. Yes, sir.

Mr. Harris:

That is in 1912 you are asking about?

Mr. Burr:

No,—

Mr. Harris:

At present?

Mr. Burr:

May 1, 1941.

Q. Now, where was that—about how far from the portal was the underground man loading station in this mine, Number 13?

A. About 4,000 feet from the portal.

Mr. Burr:

Suppose you let me have, please, sir, the map and we can properly save some time by just using it.

(Thereupon a map of the Ishkooda Division was placed on the blackboard.)

Mr. Harris:
Where was the slope entrance?

Mr. Burr:
We will get t that in a minute.

The Court:
On top, isn't it, or bottom?

Mr. Burr:
On the bottom.

Q. Mr. Cameron, you are familiar with this map, are you?

A. Yes, sir.

Q. And you know it is correct from what you have had to do with it as Superintendent and Division Engineer?

A. Yes, sir.

Q. From what I understand of this map the portal is here at the bottom?

A. Yes, sir.

Q. And what we have been referring to as the slope is shown here going down this way?

A. That is right.

Q. If you will take this and point out to the Court how the headings turn off there—

A. The slope extends down in this direction (indicating).

The Court:
Let the other lawyers see.

Mr. Burr:
Yes.

A. The slope extends in this direction, the headings in this direction and then the slopes perpendicularly to the headings,—

Q. And all these—

A. This is Number 11 mine here (indicating).

Q. Number 11? Where is number 13?

A. This is Number 13.

Q. Where is the boundary line of 13; where does it come to?

A. This is old Number 12 mine, which has been abandoned. This is old Number 14, which is being re-opened. The boundary line on the right hand side of 13—the territory has been mined out. There are no operations there at all.

Q. No operations there at all?

A. No, sir.

Q. What places were being worked on May 1, 1941?

A. 26, 27, 28, 29, 30, 31, 32, 33, 34, 35,—36 was a spare place.

Q. Do those little circles there indicate working places that were being worked at that time?

A. Working faces.

Q. The distance on there is from the portal—is that the man loading station?

A. Yes, sir.

Q. That was January 1, 1941?

A. Yes, sir. It is in the same place.

Q. That is the only distance there—

A. This face is about 4000 feet from the slope.

Q. Suppose you give them the distances; 28—

A. 4770; that is from the man loading station.

Q. That is walking distance?

A. This goes out this way and—

The Court:
That is half a mile?

The Witness:
It is nearly a mile.

The Court:
What did you say?

The Witness:
4770.

The Court:
5280 in a mile.

Q. What is the next working place?
A. 29.
Q. What is the distance?
A. 4350.
Q. 30?
A. 3535 feet.
Q. 31?
A. 3390; 32, 2995; 33, 2035; 34, 2155; 35, 1930 and 36 1845. That is the distance from the man loading station.
Q. Mr. Cameron, your crews in that mine, as well as in Number 12, your other mine—
A. Number 11.
Q. Number 11, I mean. —can be classified, can they not, into the descriptions Mr. Ball gave them? There is one crew that actually works in the working places producing ore; you call that the productive crew?
A. Producing crew.
Q. And the other crew called the service crew?
A. Yes, sir.
Q. Back under the old contract system those men were called company men?

A. Company men; that is, the service men were called company men.

Q. That is what I mean.

A. Yes, sir.

Q. Take the men working in the producing crews in the mines you have jurisdiction over and at the time I have been asking you about. Were those—did you have immediately prior to May 1, 1941—how many men did you have in a producing crew?

A. Seven man crew.

Q. How long has the seven man crew been in operation in the mines?

A. Since in the incentive system was placed in effect.

Q. That was sometime in 1936?

A. '36.

Q. Take a seven man producing crew or, for that matter, an eight man or nine man crew before that time, if they did have that many in a crew, his working place, even if he stays with the same crew, changes from time to time, does it not, over a period of time?

A. Over a period of time it does, the working face.

Q. About how long does it take—in the mine we are in now how long does it take a crew to finish mining in a working place, a stope?

A. In 13 those stopes last from six to ten months.

Q. All right. While they are working the stope during the six to ten months time the distance from the man loading station remains about the same?

A. Yes, sir, it remains about the same.

Q. About the same?

A. It is the same.

Q. The traveling time?

A. Yes, sir.

Q. His work place remains the same distance?

A. Yes, sir; the division place.

Q. What you call the division place is where the division of the stope begins off the heading?

A. Yes, sir.

Q. And the working face is where the ore is actually being taken from?

A. Yes, sir.

Q. That is the way you understand it?

A. Yes, sir.

Q. Those men don't generally stay in the same producing crew all the time?

A. They generally stay in the same producing crew all the time.

Q. You do have changes at various times?

A. Yes, sir, replacements; some of the head miners and their crews have been in those working places since—

Q. Since the incentive plan started?

A. Yes; way back before.

Mr. Harris:

We suggest he let him testify some, Judge.

The Court:

Yes.

Q. I don't care how far back it goes. The further back it goes the better I like it.

A. Some of the men have been in the same working place ever since it started.

Q. Ever since it was started?

A. Yes, sir.

Q. Using these same dates, we will take at mine Number 13, where is what we call the change house? Can you look on the map there and show the Court where the change house is?

A. This black—

Q. Just point it out with this.

A. This is the change house here (indicating on map).

Q. What distance is that from the portal?

A. 550 feet.

The Court:

Is that the bath house?

The Witness:

Yes, sir, change house, dry—some people call it the dry.

Q. The individual miner, that is the first place he goes to before his shift begins?

A. Yes, sir, goes to the bathhouse first and changes his clothes.

Q. Changes his clothes?

A. Yes, sir.

Q. You have heard Mr. Ball testify as to the way that was conducted. Do you have the lockers?

A. We have the lockers.

Q. Each man has a locker where he keeps his clothes?

A. Yes, sir.

Q. And he puts on his working clothes and leaves his other clothes there until he comes back that night and changes?

A. That is right.

Q. Is there a charge there?

A. No charge at the bath house at all.

Q. Was there ever a charge made at Ishkooda for bath house service, and if so, when and what was that charge?

A. There was, my recollection, a 50 cent charge made for each man who used the bath house.

Q. Do you remember about when—

The Court:

That was per month?

The Witness:

That was per month, yes, sir.

Q. Do you remember when that charge was taken off? When was it taken off and the facilities furnished free?

A. I don't remember the exact date, but it has been eight or ten years ago.

Q. I see. Has the use of the bath house always been voluntary or enforced?

A. Voluntary.

Q. The men can or can not use it as they please?

A. That is right. Anybody that wishes to use the bath house does so. I imagine about 95 to 98 per cent. of the men use the bath house.

Q. I imagine you furnish hot and cold water, soap and towels?

A. No soap and towels; hot and cold water.

Q. Hot and cold water?

A. Then we have a man that looks after the bath house and keeps it clean.

Q. Now, I want you to just take first one of these productive miners, we will say a mucker or drill helper. You call them now, I believe—

A. Head miners, drill runners, section helpers, drag operators.

Q. Head miners, drill runners, section helpers, drag operators. Suppose we start with a head miner. After he changes clothes at the bath house where does he go?

A. He goes to the tally house. That is at the portal of the mine.

Q. At the portal of the mine?

A. Yes, sir.

Q. When he gets there does he get anything for his light?

A. Gets some carbide for his lamp.

Q. He owns the lamp?

A. He owns the lamp, yes, sir.

Q. Is the carbide sold to him?

A. The carbide is sold to the employees at cost in containers that hold a pound or a pound and a quarter?

Q. About how many days supply does a container hold?

A. It depends on the man. Some miners get a can almost every day. Most of them get a can every couple or three days.

The Court:

What is that difference? Some of them go frog hunting?

The Witness:

Some of them go frog hunting, yes, sir, and some of them carry their lamps back and forth at night so they can see to get home.

Q. Just that difference in humans that is mighty near in everything?

A. Yes, sir.

Q. All right, sir. Is the purchase of carbide from the company enforced or voluntary?

A. That is voluntary. They can buy the carbide anywhere they want to, but I would say practically 100 per cent. of them buy the carbide from the company.

Q. They get it at cost?

A. Get it at cost, yes, sir.

Q. What length of time, Mr. Cameron, would you say is taken by this man in getting his carbide after he gets up there to the portal, the tipple house?

A. About a minute; just long enough to pass an empty can in the window and get a full can in place of it.

Q. What is the next thing that man does after he gets his carbide?

A. Turns his brass check in.

Q. Who does he turn it in to, the man in the tally house?

A. Generally the mine foreman.

Q. What is that?

A. Generally the mine foreman; sometimes the assistant Mine foreman.

Q. What does the mine foreman do with it?

A. He hangs it up on the board for the working place to which the man has been assigned.

Q. The board has appropriate hooks for each working place?

A. Has a nail without a head on it. There is one nail designated section foreman, two nails for the drill runners, one nail for the drag operator and three or four or five nails for section helpers.

Q. All right, sir. After that what is the next thing this man does?

A. Gets on the skip and goes inside.

Q. All right, sir. Now, in reference to the skip, at this particular mine about how many skips do you operate per shift?

A. Three or four.

Q. Three or four?

A. Generally four on the day turn and four on the night turn.

Q. Is there any scheduling of the miners as to what skip they shall ride on or is that left to their voluntary selection?

A. That is left to the miners; as long as there are men up there to fill the skip there is nothing said about who should ride it.

Q. If a miner or some of them should happen to be too late for the regular, scheduled trip how do they get in the mine?

A. Unless they are too late they go down on an extra trip or go down on the day trip when the foremen go in.

Q. The foremen are the last ones to go in?

A. Yes, sir, on the day shift.

Q. Now, take this productive crew we are working on at the present time. Does the head miner assemble his crew and take them all down together, or do they go as they please?

A. They go down as they please, down to the man loading station. There is some loitering around the man loading station, sometimes wait for a buddy to walk up to his working place with.

They are all supposed to be in their working places at 6:45 when the lights come on. That is when the generator starts; 6:45 when the lights go on.

Q. Before we get to that, give us the schedule of the cars before May 1, 1941. What time did your skip start in the morning?

A. About seven or eight minutes after six in the morning.

Q. How far would they be spaced apart?

A. Just as fast as they could take the men down and come out. At Number 13 it takes about seven minutes, around that.

Q. Was that all figured out so resulting that all the men could get to their working places without reference to which one of those skips they caught at 8:45—6:45, I mean?

A. At number 13 most of the men were able to reach their working places by work time no matter what skip they ride.

Q. How many would you figure couldn't reach their working places by work time?

A. There are a few who work up here in 28 and 29 that might be five or ten minutes late.

Q. You say there are some that loiter around and wait for a buddy. They don't have to be there until 6:45?

A. Until 6:45.

Q. What happens at 6:45 in the way of starting the work. You said something about a generator. What was that?

A. The motor generator starts at 6:45. That lights the lights around the mechanical loader and designates to the

men it is work time, and the first thing they do then is to examine and quarry their working face and see everything is safe.

Q. Before you start doing that, can they begin to do any work before that generator starts or is that generator necessary before the work starts?

A. They can't move the mechanical loader until the current is turned on. Of course, they could start any other work if they wanted to.

Q. Do they start any before 6:45 or not?

A. Not supposed to.

Q. Not supposed to?

A. No, sir.

Q. Is that when their pay starts and their work starts, at 6:45?

A. Yes, sir.

Q. Now, take that crew; you say the head miner is in charge of it?

A. Yes, sir.

Q. Who are the next men based on the pay they get, the occupational rate?

A. The two drill runners.

Q. The two drill runners, and who comes next?

A. The drag operator.

Q. That makes four. Who is next to them, the head miner, and you have got—

A. Three section helpers.

Q. They are the ones that have the lowest occupational rates?

A. In the producing crews.

Q. That is the one we are traveling on now.

A. There is another man that works in that crew sometime, the haulage engineer. He is a service man, though. He is not—

Q. I see. Is that crew divided, you might say, into two classes of work—

A. There is a drill crew and a loading crew.

Q. There is a drill crew and a loading crew?

A. Yes, sir.

Q. Suppose we take the drill crew first. When they get there and the generator is turned on at 6:45 what is the first work the drill crew would start doing?

A. Making their work place safe.

Q. What do you mean by that?

A. They would quarry it and test it, and quarry down all loose rock and—

Q. Under—

A. —and such as that and get their place safe.

Q. Who is responsible for that work?

A. The head miner is responsible for it. The drill runner usually does the work.

Q. Usually does the work?

A. In case of bad top the head miner stays right with that crew until it is taken down.

Q. After that work has been done, the loose rock quarried down and the place made safe, what does the drill crew do?

A. They get their hose stretched out and drill set up and start drilling. They have to get their drill from whatever safe place it has been placed in before proceeding with their drilling. The drill has been placed in some safe place by the preceding crew, sometimes behind a pillar or down at the ramp.

Q. Has the drill and hose been left in the working place by the previous crew?

A. Yes, sir. It stays in the working place all the time unless it has to be taken out to be repaired.

Q. Then—

A. Then they begin to drill the holes.

Q. The holes?

A. Yes, sir.

Q. That is done as Mr. Ball illustrated there on the board?

A. Yes, sir.

Q. About when, in the day's work, do they finish that?

A. They finish drilling, I suppose, around two o'clock on the average.

Q. After drilling it are the holes loaded?

A. They send one of the members to the powder man to get the powder and fuse and caps.

Q. They send a man down with a requisition; is that the way it is done?

A. A requisition, yes, sir.

Q. The head miner gives the man a requisition for how much powder and caps and fuses he needs?

A. Yes, sir.

Q. And he goes down during the day's work and gets that?

A. Yes, sir.

Q. Then they load the holes?

A. Yes, sir.

Q. What time would that drill crew do the shooting?

A. The generator stops at 3:10 and that is the signal to light the holes.

Q. That is the latest they can light them or not? I don't know. I am just trying to find out.

A. It depends on what you mean by what time they can light them. They are supposed to light them at 3:10 and get out of the way, get out of the work face before the charge goes off.

Q. That is the rule?

A. Yes, sir.

Q. And would you say they customarily and as a general rule do get out by that time or do they stay later?

A. Occasionally somebody's watch is a little fast and they will shoot a little earlier than 3:10. While they are not supposed to, they might hear somebody else's shots somewhere and think it is time to shoot and they go ahead and shoot.

Q. Is that the end of their day's work?

A. That is the end of their day's work.

Q. Then—and then they go down to the—

A. To the man loading station.

Q. And catch the skip out?

A. Yes, sir.

Q. Let's leave that and go back and get the other part of the crew, the loading part. When they get there in the morning at 6:45 what do they begin to do?

A. They quarry the working face and drill the hanger holes, pull the ropes up into the working place, hang their skidder block, and start loading ore.

Q. In drilling those holes what type of drill do they use?

A. They use a jack hammer drill.

Q. Jack hammer drill?

A. Yes, sir, a small—

Q. That is, the drill Mr. Ball described, the smaller drill?

A. Yes, sir.

Q. As I understand you, the loading part of the crew does that?

A. Loading part, yes, sir.

Q. They drill these hanger holes and put the hanger hooks in, and put the wedges in and C-hook?

A. And attach the ropes to the skidder block.

Q. And the fellow that operates the drag begins to operate the drag and drag ore up to the ramp into the car?

A. Yes, sir.

Q. How long do they continue that work?

A. They are supposed to stay there until 3:10. Some of them leave as early as three o'clock. Some of them have been known to leave as early as 2:30. That is particularly true where the drag crew has loaded all the ore shot down by the preceding crew,—nothing particularly

for them to do at the face and they come on down to the man loading station.

Q. Does the loading part of the crew have to be out before the shooting part shoots?

A. They have to be out before they shoot.

Q. They have to leave before 3:10?

A. They have to leave before the drillers.

Q. And usually and quite often they leave a good deal of time before that time?

A. I would say they leave the face about three o'clock.

Q. About three o'clock?

A. On the average.

Q. Who does the actual shooting?

A. The drill runner and head miner.

Q. How many stay back to do the shooting after the others leave?

A. Three, and the drill helper, if necessary.

Q. If necessary?

A. Yes, sir.

Q. All right, sir. Now, if the—if these men—if the loading part of the crew leaves before the shooting part, they get down to the hoodlum or man loading station ahead of the head miner and drill helpers?

A. That is right.

Q. Naturally?

A. Yes, sir?

Q. The first car or trip is supposed to leave at what time to haul them out of the mine?

A. The first trip left the man loading station at an average of 3:14, sometimes 3:13, always an average of before 3:15.

Q. If they got there before 3:13 or 3:14 they waited there for that trip?

A. That is right. The first men that get there go out first.

Q. Is there any arrangement there for seats for them to sit on while they are waiting?

A. The company men, service men generally get there first. They get back to the tool house. They have to be out of the headings before any shooting is done.

Q. They are generally the first ones in and the first ones out; is that the way it is?

A. They are generally the first ones out; not necessarily the first ones in.

Q. And the rest of the men catch the car—

A. Coming out they take their turn. The first one to the hoodlum station is the first one out, and the last ones come out on the last trip.

Q. Are all of them out of the mine or were all of them out of the mine at what time?

A. At number 13, you mean?

Q. Yes, sir.

A. Generally speaking everybody was out of the mine by 3:40.

Q. Now, during the time they were in the mine was there any period for lunch?

A. Thirty minutes, from 11 to 11:30. That is—

Q. Was there any indication of the lunch period?

A. That is indicated by a flashing of the lights, blinking them.

Q. Blinking them at 11:00 o'clock?

A. At 11:00 o'clock and again at 11:30.

Q. Where do they go to get their lunch, Mr. Cameron?

A. They have a place to eat and a place to make coffee and sometimes a table.

Q. Where is that located, Mr. Cameron?

A. That is in the working place,—not exactly in the working place, but back of the first pillar back of the working place. They have an electric grill there where they make coffee if they wish to.

Q. About how long after they—before I get to that, let's take up the service men next. How is the time of the service men going in and out of the mine regulated?

A. The service men go in on any trip they wish and go to the tool box and wait for work time and wait for the foremen to tell them, especially the timber crew, where to go to set timbers. They generally get back to the tool box around three o'clock.

Q. Isn't there some employees there, a trip rider—

A. Skip tender. He has charge of the skip.

Q. Did he go in the mine earlier than the others did?

A. He did prior to May first. He went to work at six o'clock and quit at four. He was paid an hour over time. There were two skip tenders. One went to work at six o'clock and quit at 3:30, and received overtime. They worked nine hours.

Q. What was it necessary for them to go in earlier?

A. They had charge of the skip. It was their duty to take the skip out of the side track.

Q. And get it there ready to start off?

A. Yes, sir, and had to put the skip in the side track at the end of the shift.

Q. They had to work extra time and got extra pay for it?

A. Got extra pay for it.

Q. I will ask you as to when the computation for pay of the productive workers began?

A. At 6:45.

Q. When did it end?

A. 3:15,—thirty minutes out for lunch.

Q. Did it begin at that time and end at that time irrespective of whether the men left their places of work as you have described?

A. That was—that is considered work time, 6:45 and 3:15 and if they didn't get to the face until 7:00 o'clock, or if they left the face at 3:00 o'clock they were still allowed the eight hours.

Q. Whether they worked the eight hours or not?

A. Whether they worked the eight hours or not.

Q. And you have told about the customary time when they left and went in?

A. That is right.

Q. Did the same thing apply to the service crews as well as the productive crews?

A. Yes, sir.

Q. They got paid and their time was computed in the same way?

A. That is right.

Q. Where did the day's work for the service crews begin?

A. At the tool box. That is near the man loading station.

Q. Is that where they report for work?

A. Yes, sir.

Q. And were told by the mine foreman where to go and what to do?

A. That is right.

Q. And time began when they got there and received their instructions?

A. Yes, sir.

Q. They had to wait—their time, of course, didn't begin until the mine foreman came down?

A. The track crews or chute crews, if they were laying up a piece of track, or building chutes at a certain place, they would just go by their tool box and at 6:45 go on to their regular working place. They didn't have to wait for the mine foreman. They knew where to go.

Q. They knew where to go?

A. Yes, sir.

Q. And their time began to be computed at 6:45?

A. Yes, sir.

Q. And ended at 3:15?

A. 3:15.

Q. I will ask you to state, Mr. Cameron, about how long previous to May 1, 1941, had that custom and system been in force in your mines you have testified about?

A. Since the incentive system went in in 1936.

Q. Previous to that what change was there in that system, if any? What was the change in that?

Mr. Harris:

Now, merely to preserve the consistency of our position, Judge, and not to operate as a waiver, of course all testimony prior to—

The Court:

October 24, 1938.

Mr. Harris:

—October 24, 1938, I object to that testimony.

The Court:

We understand your objection is in.

Mr. Harris:

Yes, sir.

The Court:

I will overrule the objection.

Q. Probably I can get the question clear, Mr. Cameron, this way: For how long a period of time had the company, previous to May 1, 1941, been computing and paying the men on eight hours computed from working place to working place?

A. Well, the eight hours went into effect in 1933, I believe it was.

Q. Was the eight hours computed—

A. Face to face, they call it.

Q. That is the same as working place to working place?

A. It has always been computed on face to face or working place to working place.

Q. Was that true when you had ten hours?

A. Mine has always been computed face to face.

Q. Have you ever known of it being computed in any other way?

Mr. Harris:

Oh, we object to that question.

Mr. Burr:

I think that is a proper question.

The Court:

Overruled.

Q. Have you ever known it to be computed any other way?

A. Not where I have worked.

Q. Since you have been working for the Tennessee Company, confining it to them, has it ever been computed or paid for any other basis than the face to face or working place to working place basis?

A. Never; always been computed on the face to face basis.

Q. You say exhibited yesterday the kind of statements furnished them in giving them their account on pay day and their receipt that is at the top of the statement?

A. Yes, sir.

Q. Have those been in use at the Ishkooda Mines?

A. Yes, sir.

Q. During this period of time?

A. Yes, sir.

Q. Each individual man has, since they have been paying four times a month, been given those statements and signed those receipts four times a month; is that right?

A. It is four times a month now. It used to be twice a month.

Q. I mean since it has been four times a month they have been given the statements and signed the receipts four times a month?

A. Yes, sir.

Q. And when it was twice a month they got their statements and signed the receipts twice a month?

A. They have always signed receipts for their money.

Q. That has been true all the time?

A. Yes, sir.

Q. First, in reference to negotiating wage scales or wage contracts, Mr. Cameron, have you ever had any authority to make the wage scales or to make the contracts with the unions or representatives of the employees?

A. None whatever.

Q. Have you sat in on those conferences occasionally or not?

A. Very seldom.

Q. Very seldom?

A. Yes, sir.

Q. During the period of time—first, I will ask you this: Do you remember about the year when the Smelters Union was organized; do you recall the date of it?

A. Sometime in '33.

Q. Sometime in '33?

A. Yes, sir.

Q. Previous to that time had there ever been an International Union of Smelters or American Federation of Labor or any other union of any kind at your workings?

A. No, sir, not on the mountain.

Q. There had been, to your knowledge, at the coal mines and other places around in the District?

A. Yes, sir.

Mr. Harris:

We object, that is immaterial.

The Court:
Yes; that is immaterial.

Mr. Burr:
We except.

Q. But there never had been at your place?

Mr. Harris:
We object.

The Court:
Yes, sir.

Q. But previous to the time—

The Court:
Mr. Burr, confine that to the ore mines.

Mr. Harris:
I didn't object to the ore mines.

The Court:
That is the ruling of the Court.

Mr. Burr:
We think the other is admissible. We take an exception. We want an opportunity to be heard by Your Honor when we get to it. If I am able to convince Your Honor I am right it may be necessary to call some of these witnesses back on that one point.

Mr. Harris:
We will want to be heard too.

Mr. Burr:

We will all be heard. I know he is going to hear us all as long as we are not too unreasonable about it.

Q. Now, excluding the coal mines,—I have left that out and the Court has left it out too for the present. Excluding the coal mines, have you ever been in the ore mines, since you have been connected with them, ever known of the wages being paid or computed on any basis other than the working place to working place plan?

Mr. Harris:

We object.

The Court:

That is repetition.

Mr. Harris:

Yes, sir. We object.

Mr. Burr:

Is it? I didn't know whether I had covered that or not.

The Court:

That has been brought out, Mr. Burr?

Q. Now, previous to 1933, when the Smelters Union was organized at your place, had you, as Superintendent of the Ishkooda Division, held meetings with the representatives under what Mr. Ball described this morning as the Mutuality Committee, and that followed by the Employees Representation Plan?

A. I never held meetings with the Mutuality Committee. A special man came out from town to hold those meetings.

Q. To hold those meetings?

A. I did hold meetings under the Employees Representation Plan, and also the Industrial Relations Plan—

Q. The Industrial Relations Plan?

A. —which meetings pertained to our organization or division.

Q. In those meetings did these representatives, regardless of who appointed them, bring up any grievances they had or not?

A. They did.

Q. Would you try to dispose of them, if you could?

A. If they could be handled satisfactorily in my office, we did so.

Q. And if you couldn't, where did they go to?

A. If we couldn't handle them they went to Mr. Ball's office.

Q. After the Smelters Union was organized did you handle matters of grievances and complaints with the representatives of the Smelters Union?

A. I did. They were handled in the same way.

Q. And when the Brotherhood of Captive Mine Workers was organized, did you handle matters with them?

A. I did. They were handled in the same way.

Q. And after they affiliated with the American Federation of Labor, did you hold meetings with them in the same way?

A. I did. They were handled in the same way.

Q. Did you keep minutes of those meetings?

A. Yes, sir.

Q. Were copies of those meetings—the minutes of those meetings retained by you in your office?

A. Yes, sir.

Q. And copies given to the committees?

A. And copies given to the committees and a copy sent to Mr. Ball's office.

Q. One copy kept in your office and a copy sent to Mr. Ball's office, and a copy kept by what we may call the opposing parties, the employees?

A. They were given any number of copies they wanted.

Q. Who kept those minutes, your secretary?

A. My clerk kept them.

Q. And transcribed them and they were handed out as you have stated?

A. Yes, sir.

Q. Were they signed by anybody?

A. Signed by some member of the committee and myself.

Q. That was the universal custom?

Mr. Harris:

I think Mr. Burr is leading him a little.

The Court:

I think so, Mr. Burr.

Mr. Burr:

I don't think that is leading.

The Court:

Well, it is getting along a little faster.

Q. Was that the universal practice of handling that matter during that time?

A. That was the universal practice of handling that matter during that time; that was the way we handled all committee meetings.

Q. I will ask you to state whether or not—I will change the question. I will ask you to state whether or not at any of those meetings at any time with you any one ever presented a claim that the basis of computing and payment of wages on the face to face basis should be changed so as to include compensation for traveling time?

Mr. Harris:
We object to that, if the Court please.

The Court:
Overruled.

Mr. Harris:
We except.

The Court:
Now, did you say anybody or any employees or members of the committees?

Q. Any of the employees or members of the committees representing the employees?
A. Nobody ever presented that to me.

Mr. Burr:
Right now, before I forget it, the Court will recall—I wasn't here when Your Honor ruled on it, but I think the understanding was pretty definite about it. I filed a motion requiring the production of any of those minutes, and I would like to know if they are available to me.
I will not bother about reading them this afternoon, but I—

The Court:
You gave them notice to produce?

Mr. Burr:
Yes, sir. That was in our notice to produce served on both parties, either these gentlemen or these gentlemen.

Mr. Harris:
They served notice on us to produce.

The Court:
Are they available?

Mr. Harris:
I don't know whether they are or not.

Mr. Burr:
Over the recess can you get them for us?

Mr. Harris:
I think we can.

The Court:
You mean over the week end?

Mr Burr:
Yes, sir.

Mr. Harris:
We will try to get together all those documents.

The Court:
They will be available?

Mr. Harris:
Yes, sir.

Mr. Burr:
That includes Ishkooda, and Wenonah and Muscoda. That applies to you gentlemen also.

Mr. Smith:
We haven't any minutes. We have the contracts.

Mr. Burr:
If you have no minutes I don't want them.

Mr. Smith:
That is right.

The Court:
All right.

Mr. Burr:
One of my associates is a little bit doubtful whether I asked this question. I think I did, but I will ask it again so I can be certain.

Q. I want to ask you again, Mr. Cameron, if I have asked you, as to whether or not you had any authority at all to consider the question of negotiating or making contracts with reference to wages.

Mr. Harris:
He asked that right at the very first.

Mr. Burr:
I thought I did. I want to be certain.

A. No, I didn't.
Q. I want to be certain. What you handled is local grievances and complaints?
A. Yes, sir.

The Court:
Gentlemen, we might take a recess. I have to answer a telephone call at a quarter of three. We will take seven or eight minutes recess.

(Thereupon proceedings were in recess from 2:46 P. M., to 3:00 P. M., at which time proceedings were resumed as follows:)

The Court:
Proceed with the witness.

Mr. Harris:
Mr. Cameron,—

Mr. Burr:
I hadn't finished with him.

Mr. Harris:
I thought you had.

(By Mr. Burr):

Q. Now, Mr. Cameron, the detailed questions I have asked you relating to Mine 13, without going into the other mine, is the general condition about the same in mine Number 11 as exists in 13 so far as the questions I have asked you about transportation and crews and so forth?

A. Yes, sir.

Q. About the same conditions exist?

A. Generally speaking, yes.

Q. Now, you made some changes, did you not, in 13 and also in 11 on May 1, 1941?

A. We did.

Q. I wish you would tell us what changes you did make and how the mines have been operated since May 1, 1941, down to the present time.

A. On May 1, 1941, what is called the portal to portal time went into effect.

Q. I see.

A. That necessitated changing—

Mr. Harris:
We object to what it necessitated. Just tell us what you did do.

The Court:
Yes; I sustain that.

Q. Just tell us, what you did do; what changes you made and put into effect.

A. The time the first trip left the surface was earlier.

Q. What time does it leave since May first?

A. Since May first it leaves about 6:02.

Q. After that does it go down about as it did before?

A. Yes, sir.

The Court:

You mean the same intervals?

The Witness:

Yes, sir.

Q. Do you or not—

A. It doesn't take quite as long to make the three or four trips as it used to because there are always enough men to fill the skips and we don't have to wait so long.

Q. You mean the men are more prompt in getting there?

A. More prompt in getting there. They are supposed to be at the portal at six o'clock.

Q. That is when they are supposed to be there?

A. Yes, sir.

Q. The time is computed and paid for from six until 2:30?

A. 6:00 until 2:30 with thirty minutes out for lunch.

Q. That is the first change. What other changes?

A. There are other changes. The skip tender used to to go to work at 6:00 o'clock and take the skip off the side track at 6:00 o'clock and make the safety run when it is necessary. Now the skip tender's time starts at 5:45, —fifteen minutes to six,—and he does that before 6:00 o'clock. He gets the skip out of the side track before 6:00 o'clock and examines it and gets it at the loading point ready to go when the men get out after they check in and get their carbide.

Q. The skip tender's time begins at what time?

A. 5:45.

Q. 5:45 and runs until when?

A. 2:45.

Q. There is some over time in there?

A. Yes, sir. From 5:45 to 2:45 in nine hours, and they have no time for lunch. They are paid for a hour over time with the thirty minutes allowance from time and a half for overtime.

Q. The first trip leaves at 6:02 and the others leave at intervals probably a little quicker—

A. They go in quicker than they used to. I don't mean quicker time but at quicker intervals.

Q. Because of the men assembling earlier?

A. Yes, sir.

Mr. Harris:

I would prefer he would tell it. Mr. Burr is doing the testifying, if Your Honor please.

Mr. Burr:

This witness is too intelligent to be led. It might be true if I were examining an ignorant man.

The Court:

Let's go ahead.

Mr. Burr:

I know he wouldn't be led if I would lead him him. I am just trying to get on.

The Court:

Go ahead.

Q. I will ask you, then, so there will not be any leading questions in it, if I can put the question. Are the

trips—do the men get in the mine quicker or slower than they did prior to May 1, 1941?

A. They get in the mines quicker.

Q. What is the reason for them being able to get in the mine quicker?

A. Well, the first reason is because the skip leaves the outside five or six minutes earlier than it used to because of the fact the skip tender goes to work earlier than he used to, and is able to do the required work before the man trip is run before six o'clock so that at six o'clock the men can start loading up immediately after checking in and obtaining their carbide.

Q. I see. Now, then, do the men, since May first, proceed to the places of work just the same way they did before May first?

A. Yes, sir, only there is no loitering at the hoodlum station now like there used to be. They get off the skip and immediately go to their working places.

Q. I see. Now, what time do they get to their working places now? That doesn't make any difference now so far as computing the time—

Mr. Harris:

That is argumentative.

Mr. Burr:

Oh, I don't mean to be argumentative. What is the matter with you, Crampton?

Mr. Harris:

You are not usually so bad.

Mr. Burr:

I may be a little dense. I told you I had a headache.

Q. What time do they get to their working places?
A. By 6:45.
Q. When is the generator cut off now?
A. At 1:45 instead of 3:10.
Q. And then they proceed to the hoodlum station?
A. Yes, sir.
Q. What time does the first trip go out?
A. At 1:45.
Q. The shooting time now is what?
A. 1:45. You see the difference there of shooting time from 3:10 and work time was 3:15. A difference of five minutes there was the time that was allowed the head miner and drill runner to load the holes on work time. Now it is all work time and they load the holes at 1:45, shoot the holes, I mean.
Q. Now what, under the present system as contrasted with the system that existed before May 1, 1941,—how much time, if any, is lost of working time at the face, productive time?

Mr. Harris:
We object to that, if the Court please.

Mr. Burr:
We think that question is entirely relevant.

Mr. Harris:
We think that question is irrelevant.

The Court:
The question asked what time is lost?

Mr. Harris:
Yes, sir.

Mr. Burr:
Yes, sir, how much less time.

The Court:
I will overrule the objection.

Q. How much difference is there in the time?
A. There is an hour and thirty minutes difference.

The Court:
An hour and how much?

The Witness:
An hour and thirty minutes. The last one used to leave at 3:10 and now they start at 1:45,—an hour and twenty-five minutes. That is an hour and a half less hoisting time for ore.

Q. Mr. Cameron, you heard Mr. Ball testify as to the figures on the incentive plan on cross examination, in which he stated, as I recall, that the normal production under the incentive plan at the point the incentive earnings began was 134 tons?
A. Yes, sir.
Q. Can you translate that for us in cars at your mines? How many cars did it take to make 134 tons?
A. 134 tons was—134 tons was approximately 20 cars of ore at 6.7 tons to the car, and the incentive earnings under the face to face time was based on three tons per man hour over the entire eight hours,—
Q. Yes.
A. —and that meant that the incentive earnings started roughly at 20 cars. Now, when I say 20 cars, I don't mean actually 20 cars; according to train weights it might be twenty and a half or nineteen and a half, but approximately 20 cars.
Now, under the new portal to portal system the same basis of three tons per man hour is used—

Mr. Brodie:

I object to anything this witness says regarding the new portal to portal system. That wasn't included in the question.

Mr. Burr:

If I had included it they would say I was leading.

Q. I want you to testify to the differences between the old and new.

The Court:

Overrule the objection.

Mr. Harris:

We adopt that objection.

The Court:

Overruled.

Q. Go ahead, Mr. Cameron.

A. Since the portal to portal has been adopted the incentive earnings are based on the same three tons per man hour but on six and a half hours at the face..

Q. Just a minute. Did the company itself make that adjustment when the portal to portal was put in?

Mr. Brodie:

I object to that, Your Honor.

The Court:

Overruled.

A. I think they did, Mr. Burr. I don't know, Mr. Burr.

Q. That was done anyway?

A. That was done.

Q. Go ahead and finish your explanation.

A. Then the incentive earnings, being based on six and a half hours at the face, roughly speaking, means their incentive earnings now begin at 16 cars or between 16 and 17 cars.

Q. I see.

A. So that the men know that under the old plan they started earning incentive after they loaded twenty cars, and now they start getting the incentive after they load sixteen cars.

Q. Now, since the plan went into effect, over May and June it has been into effect, have your headings and working places,—I mean stopes,—I mean working places,—have they been producing the approximately 20 cars a day or approximately 20 cars a day?

Mr. Harris:
We object to that, if the Court please.

The Court:
Overruled.

Mr. Harris:
We except.

A. Most of the places are producing sixteen cars now where they used to produce twenty.

Q. Have you got the figures, Mr. Cameron, that show the results in tons during May and June as contrasted with the average production during January, February, March and April, the four months preceding it?

Mr. Harris:
We object to that, if the Court pleases.

The Court:

Mr. Burr, there are so many factors entering into that—

Mr. Burr:

Sir?

The Court:

Wouldn't there be so many factors entering into that difference—

Mr. Burr:

Certainly there couldn't be any factor as big as having an hour and a half cut off the working time. If there are any other factors they have a right to show them.

We propose to show when they worked eight hours they got out so many tons, and since they put this in, with everybody striving to do it,—to do the best they can we have this difference in production.

Mr. Harris:

It gets into the question of whether everybody is striving to do the best they can, whether the air is furnished, whether there is delay in getting materials to them. You are going to have to go into a comparative operation of the mine.

The Court:

That is what I was afraid of.

Mr. Harris:

That is the reason I objected to the other question.

Q. I will ask you if during that period the same men worked substantially as they did before, and are conditions with reference to cars and ventilation and air and delay about the same as they were?

Mr. Harris:
We object to that because it calls for a summary conclusion of many factors.

The Court:
Overruled.

A. They are the same except there is an hour and a half less work time.

Q. Can you tell us of the difference in the tonnage, whether it is more or the same or less than the preceding period?

Mr. Harris:
Same objection.

The Court:
Overruled.

A. It is a great deal less.

Q. Do you know the figures?

Mr. Harris:
Same objection.

The Court:
Overruled.

Mr. Harris:
Except.

A. About 500 tons every 24 hours less in the two mines, 11 and 13, Ishkooda.

Q. 500 tons every twenty-four hours. That would amount to—that would be a matter of mathematics.

That is all.

Cross Examination.

(By Mr. Harris):

Q. Mr. Cameron, you say you are a graduate engineer?

A. Yes, sir.

Q. Isn't customary in making a map to make north at the top instead of the bottom?

A. Not necessarily.

Q. That isn't the general rule in map making?

A. It depends on what kind of a map you are making.

Q. I have never seen one with the top of it south and the bottom of it north as I recall.

A. You will find that any engineer that looks at a map of that kind practically always insists on looking down the mine because when you stand at the portal everything on your right,—and look down the mine,—everything on your right hand side is right and everything on your left hand side is left.

Q. So a map is made—

A. When you are looking at it this way, when you speak of the right hand side of the mine, you have everything on your right.

Mr. Burr:

Crampton, do you want us to have those re-made and turn them around?

Q. A map of a mine is different from other maps?

A. Another reason for making it that way, the paper you make it on is limited in size and you have to make it so each end of the working will be on the map and not off the map.

Q. Does this in here indicate it has been worked out? I am referring to old 14 and a space between old 13,—there where my hand is?

A. Everything has been worked out except that area shaded by a black line.

Q. Can you indicate that? I don't know what black line you are talking about.

A. Take this territory right here; here is a black line that surrounds that. That means that area right in there is a pillar. That ore is left in there. It is mined out in between as Mr. Ball indicated.

Q. I don't mean to ask whether you have robbed the pillars in here, but has this territory been mined?

A. Yes, sir.

The Court:

What is that white area where his finger was right there?

The Witness:

This area in here—

The Court:

Unmined?

The Witness:

No; it is an area caused by a fault. There is a 150 or 200 foot fault in there, which, when it drops down, it leaves this area—

The Court:

That has not been mined?

The Witness:

We have mined on this side up to the fault and on the other side up to the fault. There is no ore in there.

The Court:

There is no ore in there?

The Witness:

No, sir. It is a different elevation.

Q. You say you are re-opening 14; old 14 you are re-opening now?

A. Yes, sir.

Q. How long has old 14,—how long has it been since it was worked?

A. October, 1924.

Q. And when you re-open old 14 does that mean the men go down the slope at old 14?

A. It will be a mine in itself the same as number 11 and number 13.

Q. Well, you will use this slope?

A. Yes, sir.

Q. So, if you put 14 in operation, the men over here at this place, whatever its number—I don't see any number there. What is the number of that one?

A. 28.

Q. Well, the men at 28, if you open 14, will save about 95 per cent. of the distance they walk around that way? (Indicating on map.)

A. With this exception: That those crews over there will probably go down here to 13. There will be new crews in 14.

Q. Yes, but to get men from the surface to where they work, the traveling of the men mining this area will be insignificant to what the travel has been—

A. It will be much less.

Q. It will be insignificant?

A. This travel here will be about the same.

Q. After they leave the man loading station it will be insignificant?

A. It is in comparison with these men.

Q. I am asking about these other workings?

A. Yes, sir.

Q. The ones I am asking about are 28—

The Court:

In comparison with the number on the right there?

Mr. Harris:
Yes, sir.

Q. Now, in that travel—take a man going down number 13; when he gets off at the man loading station and walks over there to 28, is the place he walks on level like the top of this table here, or is it up hill and down dale, or how does he walk?

A. There is a slight grade towards the face in 28.

Q. Up hill up here (indicating on map)?

A. Yes, sir.

Q. Is he walking up hill to the next one there?

A. All the headings from the nuck towards the face are up hill.

Q. Are they not only up grade but—

A. There is one and a half to two per cent. grade in their favor of the loads coming to the—

Q. Except for being up grade the ground he walks on or the place he walks on is straight?

A. I—

Q. Do you catch what I mean?

A. No, sir.

Q. A man can be going up grade and climbing—

Mr. Harris—
—Does the Court—

The Court:
You mean on the same plane?

A. From the man loading station—he does walk a grade of 10 or 15 degrees from the man loading station up to 28 up a regular manway and out to his working place he is on a grade of two per cent. but it is a track—a track grade.

The Court:
You mean he walks on ties?

The Witness:
Walks on ties. The ties are filled in.

The Court:
Track?

The Witness:
Just like a railroad track.

The Court:
Filled in?

The Witness:
Standard track.

Q. You stated to Mr. Burr when you went there there were 25 or 30 headings, and now there are eight; is that right?

A. I said 25 or 30. That is my best recollection.

Q. I don't—

A. I said when I went to Ishkooda as Division Engineer there were that many. When I went there as Superintendent there were not that many. You see I was Division Engineer in 1912. At that time they were working in this area up here (indicating on map). They were not working below the fault. They were driving through the rock.

Q. Now, your headings, whether it was 25 or 26 or 30,—it doesn't make any difference,—what I am coming to the number of headings has been cut down most materially, but has the number of men been reduced in like proportion?

A. The number of men working in each heading is practically double what it used to be in those days.

Q. So that although you cut down the number of headings, you haven't cut down the number of men in that proportion at all, but have doubled the number of men? I do not mean in inverse proportion at all mathematically?

A. In those days all the ore from Ishkooda was loaded by hand. Now it is loaded mechanically.

Q. So one heading will have twice as many men in it now as it did in the old days?

A. Well, generally speaking the old hand mucking headings had—let's see—four or five men in them.

Q. Now, did you have—

A. Now they have seven.

Q. Now they have seven?

A. The face of the old headings in the old days was 30 feet wide and now we have stopes—

Q. That run—

A. 220 feet.

Q. Run 220 feet?

A. Yes, sir, and the ore is loaded mechanically as against hand loading in the old days.

Q. Now, you mentioned a man that works with the crew, the drill crew, the mine crew, that I don't know anything about called a haulage engineer. What is he? That is a new one on me?

A. Well, the haulage engineers are used to operate a little hoist where the grade changes in any of the headings. Where the cars will not go over themselves we use a little hoist in tramming—pulling the cars across the hump to the nuck where the locomotive can get at them and take them out.

Mr. Burr:

Is that an auxiliary hoist?

The Witness:

Auxiliary hoist. They are not used at Ishkooda but only at two or three places.

Q. When you said in answer to Mr. Burr's question that the time lost at the face was an hour and a half, what you did to arrive at that figure was to subtract 1:45 from 3:15, and gave the difference in shooting times?

A. That is what I did, but the hour and a half I was thinking of was the hauling time, the hoisting time, and that is what counts with us now, to get the ore out of the mine.

Q. But while the shooting time has changed, there is a difference of an hour and a half in the shooting time, the men actually get to the face more quickly than they did before; isn't that true?

A. Generally speaking, yes, because the head miners keep in behind them and don't let them loiter along the way.

Q. Don't let them loiter along the way, and the company hauls them in faster?

A. Due to the fact that they get to the tally house earlier.

Q. Does the drum that hauls the skip run at the same speed since May first it did for three years prior to May first?

A. Yes, sir. What I meant when I said they got in faster was that the sequence of the trips is faster because there were always men, too, at the tally house to load the skip, whereas we used to have to wait two or three minutes for the men to get out.

Q. No lost motion at all in getting the men down?

A. No, sir.

Q. And when they get down there is no lost motion on the part of the men in getting from the man loading station to the place where they drill and muck the ore?

A. They are supposed to go immediately to their working places.

Q. And if they get there before the juice is turned on at 6:45 they can go right to work on everything except your mechanical loaders, can't they?

A. The juice is turned on just as soon as the substation tender can get there after six o'clock and we make it a point to have him ride the first trip so he can start the generator.

Q. Since May 1, 1941, when does the generator start?

A. As soon as the man can get down there.

Q. But in the old days—

A. It didn't start until 6:45.

Q. Until 6:45?

Q. Where does the man have to go that starts the generator?

A. In the generator room.

Q. Where is that? I don't know where the—

A. In number 13 it is at 28—I mean 26. In number 11 Mine it is at 66.

Q. How far is it from the man loading station?

A. The man loading station is right there and the generator is right there (indicating on map).

Q. How many feet would you say it is from the man unloading station to the generator?

A. Around 1000 feet.

Q. How long does it take him to walk that 1000 feet?

A. Oh, maybe six minutes.

Q. Now, he leaves the portal at 6:02, and he gets down there in three minutes,—

A. Three or four minutes.

Q. That is 6:05. How many minutes would you say it would take him to walk up there?

A. Maybe six or seven.

Q. That is 6:11, so the juice now goes on there about 11 minutes past six?

A. Somewhere about that.

Q. Yes.

A. Make it 6:15.

Q. The juice now goes on at 6:15 whereas before May 1, 1941, it went on at 6:45?

A. That is correct.

Q. Even without the juice being on, after the drill man got to his heading he had a light on his head so he could start to work without the juice, couldn't he?

A. You mean before or after? He doesn't need the juice to go to work. Nobody but the drag operators need the juice.

Q. That is what I am coming to. He can take his quarry bar and check the roof?

A. That is all he has to check it with.

Q. He can check the roof, and he can be setting up his drill, or he can be getting his jack hammer placed ready where he is going to put the holes for the hanger; he can be doing all that without any juice, can't he?

A. You are talking about the period of time now since May first, are you?

Q. Any time? He doesn't need the juice to do that?

A. No, but since May first he is supposed to go to work when he gets there. Under the old system he wasn't supposed to go to work until the juice went on at 6:45, which is just like the whistle blowing on the outside,—signals time to go to work.

Q. So the difference in time—if he entered the portal at 6:00 o'clock you afforded all of them opportunity to work at 6:45; the company gave them all necessary equipment or juice or air, whatever it was, was turned on at 6:45 so they could start work?

A. I said the generator was turned on at 6:45. The air goes on at 6:00 o'clock.

Q. And did it do that in the old days before May 1, 1941?

A. Yes, sir.

Q. Now, I understood you to say that on many occasions the men finished the work before shooting time and 3:10 and would leave the shooting face and go walking—

A. That is the loading crew.

Q. That is the loading crew?

A. Yes, sir.

Q. And go on up to the man loading station?

A. That is right.

Q. And did any of them before May 1, 1941 not only leave before quitting time but did they start to work before 6:45?

A. They were not supposed to start work before 6:45.

Q. But they did?

A. I don't think they did.

Q. Did you go around through the mines?

A. I never saw them working before 6:45.

Q. Did you go around through the mines before 6:45?

A. I have been in the mines at 6:45,—been in the mines before that.

Q. Now, the—what you call the service men or company men, unless their place of work is changed they know where to go to work just the same as what you call the producing men?

A. That is right,—not all the time. They do from day to day. If they are laying up a heading they presume they are going to that place unless the foreman changes them.

Q. How long does it take to lay up a heading?

A. That depends on the distance we have to lay the track; anywhere from a week to two weeks.

Q. A week to two weeks?

A. Yes, sir.

Q. This incentive plan, you didn't have anything to do with devising or figuring this out?

A. Yes, sir.

Q. Before 1936?

A. Yes, sir, before that.

Q. Were you one of the men that went off on a trip to study—

A. No, sir, I did not go off on a trip but I spent some time with the Engineering Department and with Mr. Ball going over the figures.

Q. Did you call in any of the union officials to help you figure out the incentive plan?

A. I didn't.

Q. Now, when the basis was changed on May 1, 1941, for this incentive plan, did you have anything to do with changing that basis?

A. I wasn't present at those negotiations.

Q. How did you learn about it? How did you get your information about the change? Did an order come down from the company to you?

A. I was furnished a copy of the new incentive system by Mr. Ball and told by him in conference what changes would be made in it.

Q. You can't tell what Mr. Ball told you. I just asked you how you got the information about it?

A. That is the way I got it,—from him in a conference.

Q. All right. Now, you have mine number 11 and mine number 13 under you, have you not?

A. Yes, sir.

Q. How many work underground at mine number 13?

A. About 250 or 260.

Q. You mean in the course of 24 hours?

A. Yes, sir.

Q. That means about 125 on a shift?

A. About 125 to 130.

Q. How many work in number 11?

A. About the same number.

Q. About the same number?

A. Yes, sir.

Q. And slip about the same way, about fifty-fifty?

A. About the same.

Q. Now, before May 1, 1941, when these muckers or mechanical loaders left the face before 3:10 or 3:15 they still got paid for eight hours work, didn't they?

A. Yes.

Mr. Harris:

I think that is all.

Re-Direct Examination.

(By Mr. Burr):

Q. Everybody was paid for eight hours work?

A. That was the basis.

Q. Unless they came out?

A. Yes, sir, sickness or something like that.

Q. If they worked over eight hours they got over time?

A. Time and a half for over time.

Q. That over time provision has been in effect there for sometime before the passage of this Act, hasn't it, Mr. Cameron.

A. Yes, sir.

Q. I think Mr. Ball gave the exact date.

One question I neglected to ask you.

Since you began operating under this so-called portal to portal plan, the day's wage has been computed and paid from portal to portal; is that right?

A. That is right.

Q. Has it been paid on the same occupational rate that the man would have got at his working place? For instance, does the head miner get his pay on the head miner's occupational rate and so on down for traveling?

A. Yes, sir.

Q. The same fellow sitting on—in the car going down, he gets paid according to the rate he gets when he gets to his working place?

A. Yes, sir.

Q. One other question Mr. Harris asked you. When this new mine operates some of the men will have less travel distance than they have now?

A. The men working in 14 will.

Q. And if that is true the company will have to pay less time under the portal to portal for traveling time?

A. Yes, sir.

Q. That will be true of any mine—

A. Yes, sir.

Q. In other words, a mine that is shallow will have less traveling time to pay than a mine that is deep?

A. Yes, sir.

Mr. Burr:

That is all.

Re-Cross Examination.

(By Mr. Harris):

Q. That would apply,—that shallow part he was talking about, that would apply to the other mine the further it gets? It would work both ways?

A. With the exception as the mine moves back the man loading station will be moved and increase distances at 13 and 11.

Q. But the men would have to go further from the portal of the mine to get to the working place?

A. It would take longer skip hauls but not any longer walking time.

Q. A new mine opens up from the front and it does not take long to get there, but an older mine, you go further and further all the time, and the distance gets greater from the portal to the working place?

A. Yes, sir.

Mr. Harris:

That is all I want to ask.

Mr. Burr:

The way it works is that the company that has the longest—

Mr. Harris:

We object to the argument.

Mr. Burr:

I will ask you if it is a fact that the company that has the longest traveling time to pay has to pay more wages in traveling time—

Mr. Harris:

We object to that.

The Court:

I think we understand.

Mr. Harris:

That is axiomatic.

Mr. Burr:

I agree it is axiomatic.

Listen to this: Suppose an ore mine is an open pit mine,—well, I will not ask you that question.

Come down. I want to save that question. I want to save that awhile.

(Witness excused.)

Mr. Burr:

Judge, I want to offer in connection with Mr. Ball's testimony, because I think it will preserve all the diagrams we have got, this article he referred to, which gives the pictures—

The Court:
You mean the article by Mr. Ball?

Mr. Burr:
By Mr. Ball, yes, sir. I want to offer it in connection with his testimony.

The Court:
I think it ought to be in the file.

Mr. Harris:
I don't think I would have any objection to the pictures. I would want to study the article.

Mr. Burr:
I can put it in and you can study it later and make your objection.

Mr. Harris:
Of course, my objection to anything prior to 1938 stays in to everything.

The Court:
That will be exhibit what?

Mr. Burr:
22.

The Clerk:
T. C. I. Exhibit 22.

(Thereupon a re-print of an article by E. M. Ball and A. W. Beck, published in "Mining and Engineering Journal" was marked T. C. I. Exhibit No. 22.)

The Court:
Now, are you through with that witness?

Mr. Burr:
Yes, sir, that is all for Mr. Cameron.

The Court:
Now, will we save time by adjourning now and letting you all collect your data and things?

Mr. Burr:
Yes, sir. It is just twenty minutes of adjourning time now, and I took the noon hour to go over this with Mr. Cameron so I would know intelligently how to examine him, and I didn't have an opportunity to go over it with the others.

Mr. Harris:
I don't think we will gain anything by putting a witness on.

Mr. Burr:
I will be ready to go ahead Monday morning.

The Court:
Now, about meeting Monday morning, we will meet at 9:30 and Court is adjourned until Monday morning at 9:30.

(Whereupon, at 3:40 P. M., July 10, 1941, an adjournment was had to 9:30 A. M., July 14, 1941.)

July 14, 1941, 9:30 A. M.

Court met Pursuant to Adjournment.

The Court:
Are you ready, gentlemen?

Mr. Burr:
Yes, sir.

Mr. Harris:

Judge, there is one thing that occurred Thursday afternoon just before we adjourned. I think I must have been so tired my mind had just quit working.

Mr. Burr mentioned he wanted certain documents and minutes of the union meetings, and I stated we hadn't filed any objection, and then when we got downstairs I remembered that was taken up and there was argument before Your Honor and the Court ruled we didn't have to produce them, and an order was issued, and that had completely escaped my mind, and so I want to correct the very last conversation I had with you.

Mr. Burr:

I can't imagine, if the Court pleases, why there should be any rule of the Court against requiring the production of these minutes. We certainly feel we are entitled to that beyond question. I don't understand the other rulings, but I can see some basis for them; but this ruling—

The Court:

This is committee meetings?

Mr. Burr:

Yes, sir.

Mr. Harris:

Of the union.

Mr. Burr:

Yes, sir, the joint meetings.

The Court:

The joint meetings of the union with the management?

Mr. Burr:

Yes, sir.

Mr. Harris:
I thought you meant the union minutes.

Mr. Burr:
No; the joint meetings.

Mr. Harris:
I don't object to that.

Mr. Burr:
Have you got those ready?

Mr. Harris:
I don't know. I haven't checked them this morning.

Mr. Burr:
Well, I thought I would have them this morning. What I wanted them for was to see if I had overlooked any. I wanted a full set of them in the record.

The Court:
Probably they have them.

Mr. Burr:
When can you find out, Crampton?

This may be off the record.

The Court:
As I understood, Mr. Burr, when you had these meetings,—as I understood the testimony of Mr. Ball—

Mr. Burr:
Yes, sir; minutes were kept and furnished to each party.

The Court:
—a secretary was called in and minutes kept and reduced to writing.

Mr. Burr:

Yes, sir. I want to be sure I have them all. I have introduced them all so far as I know, but I want to be sure I have them all.

The Court:

I presume you have a full set.

Mr. Burr:

It has been going on over a long time and some may have been lost.

Mr. Harris:

We will try to find them. I don't know whether we have any he hasn't got or not. Mr. Lipscomb had some files and he was trying to check them.

I think you have introduced about all there ever was.

Mr. Burr:

We have produced all we can find. I was fearful there might be others. They were introduced in the other hearing. I wanted to be sure I hadn't lost any of them.

Mr. Harris:

That is what happened to ours. There have been hearings before the Governor's Board and the National Labor Relations Board and we have about exhausted our supply.

(To Mr. Lipscomb):

Have you found them?

The Court:

Have you found them?

Mr. Lipscomb:

I may have some in my files. They were brought in there for my inspection. It wasn't my duty to keep the files. I will look and see if I have any.

Mr. Burr:

What I want is everything that occurred with reference to this portal to portal proposition.

Your Honor will recall I have introduced three occasions when there was reference to it. Mr. Ball testified he had examined his minutes and no other occasions occurred.

If they have any other occasions, I want to offer them in evidence. If they will tell me there are no others, that is all I want.

The Court:

Maybe you can stipulate that.

Mr. Burr:

That is what I say. If he will tell me that is all there is, I will be satisfied.

Mr. Harris:

We will check and see.

The Court:

When you can, find out.

Mr. Lipscomb:

I have asked the secretaries to bring in all the minutes they had.

The Court:

Today?

Mr. Lipscomb:

No; several days ago; in fact, back at the beginning of the trial. They have brought me some.

I understood at the beginning of the trial Mr. Burr had introduced all the minutes.

Mr. Burr:

All I have got. I want to see there are not any more.

The Court:

The question is how long will it take to see if you have got any more?

Mr. Lipscomb:

I can exhaust my files probably by tomorrow morning, Your Honor. I wouldn't say positively. These minutes continued over several years.

They were present in the Governor's Board hearing and Labor Board hearing and probably there were some of them that were—

The Court:

Would it be possible for the secretaries to go over them before then? They are familiar with the files.

Mr. Lipscomb:

Not my file.

The Court:

The union files.

Mr. Burr:

I don't want just your files, Mr. Lipscomb. I want the union file.

The Court:

What we want is to let the other side know as soon as possible. We have had Friday, Saturday and Sunday. They requested that the other day, I understand.

Mr. Lipscomb:

Well, Your Honor, I can have one of the defendants to run through what I have here. I possibly have all I know of in my file.

Mr. Burr:

I would make this suggestion to save time: Let Mr. Lipscomb hand over to me all he has and all the secretaries of the various locals have, and I will have Mr. Patterson and Mr. Bronaugh here to go over those and see if there is anything in there we want.

Mr. Lipscomb:

I would be glad to do it, but I wouldn't like to be excused from the trial.

Mr. Burr:

I didn't suggest that. We can do it outside Court hours.

The Court:

No, I wouldn't ask you to absent yourself during the trial.

Will you have the secretaries to go over the files?

Mr. Lipscomb:

Those I have here.

Mr. Burr:

Those we can check during a recess.

The Court:

Yes. Ask the secretaries to check during a recess. In other words, you can't be away from the trial,—I realize that.

Mr. Burr:

We wouldn't want him to be away.

The Court:

No.

Mr. Burr:

If the Court please, there is one other matter before we resume the testimony,—just an explanation of how we had in mind to present our case.

Your Honor will recall when we had the settlement of pleadings and pre-trial hearing here, Your Honor made the suggestion that if we could you would like for us to agree on the number of witnesses. Both sides told you that they couldn't very well do that.

What we have decided and tried to do is to prevent putting on cumulative testimony. We are telling you how we expect to do this so Your Honor may know and the other gentlemen too.

We started with Mr. Ball, who was the general superintendent of ore mines and quarries, to give a bird's-eye-view, and as intimate a view as he could of the whole situation.

Now, we have three divisions, Muscoda, Wenonah and Ishkooda. I have started with Mr. Cameron, who is superintendent of Ishkooda and who has a more intimate knowledge of that division than Mr. Ball. After I have finished with Mr. Cameron I expect to put on one or two or more mine foremen and head miners who have a more intimate acquaintanceship with it than either Mr. Ball or Mr. Cameron, so as to give you a top, middle and bottom view.

There may be some discrepancies because some of the mine foremen may know something Mr. Ball or Mr. Cameron may not have known about, but we want Your Honor to have the full facts.

I am going to proceed with Ishkooda and put on the other witnesses, and then take up Wenonah and later Muscoda.

The Court:

Very well.

Mr. Burr:

I am sure Your Honor will indulge us if anything occurs that makes it necessary to put on additional witnesses.

The Court:

Very well.

Mr. Burr:

Mr. Brown, I will take you next, please, sir.

1099 CLARENCE E. BROWN, being called as a witness and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Burr):

Q. This is Clarence E. Brown, is it, Mr. Brown?

A. Yes, sir.

Q. Mr. Brown, do you mind telling us how old you are, first?

A. 49.

Q. 49?

A. Yes, sir.

Q. And in what business are you engaged at the present time?

A. Mine foreman at Ishkooda.

Q. Whereabouts, please, sir?

A. Ishkooda.

Q. I want you to raise your voice a little bit so we can all hear you.

How long have you been a mine foreman at Ishkooda?

A. I was first made mine foreman in 1924, but I have been set back several times, and I don't know just how long I have been a mine foreman, but off and on since 1924.

Q. Since 1924?

A. Yes, sir.

Q. What do you mean by being set back? Were you demoted?

A. No. It was just a question of some places being shut down and the old men would be moved back.

Q. During the depression you were just running part time?

A. Yes, sir.

Q. And you shared the work as mine foreman?

A. Yes, sir.

Q. Prior to starting at Ishkooda, how long had you been engaged in the mining business? When did you start to begin with, and bring it on down? How old were you when you started?

A. Fourteen years old.

Q. Fourteen years old?

A. Yes, sir.

Q. Where did you start?

A. Brookwood.

Q. Brookwood?

A. Brookwood.

Q. Where was that?

A. A coal mine in Tuscaloosa County.

Q. Do you remember who operated it?

A. I don't remember. I think it was Alabama Consolidated Coal Company.

Q. When did you leave there and go to another mine?

A. I think I left there in 1908.

Q. Just what did you do while you worked in that mine? I don't want to go into the details of it, but the general—

A. I was mining coal, working with my father.

Q. On a contractual basis, contracting?

A. Contracting.

Q. You were working with your father?

A. Yes, sir.

Q. Digging coal?
A. Yes, sir.
Q. You left there, you say, in 1908?
A. I think so.
Q. Where did you come next?
A. Number 4 at Wylam.
Q. Was that a coal mine?
A. Coal mine.
Q. What company was that mine operated by?
A. T. C. I.
Q. Just in a general way what duties did you perform there?
A. I was digging coal and also worked on tracks some there at Number 4.
Q. Working on tracks, were you what is commonly referred to as a company man?
A. Yes, sir.
Q. Digging coal you were a producer?
A. Tonnage basis.
Q. Was that a slope mine?
A. Yes, sir, slope.
Q. How about the mine at Brookwood you worked at first?
A. That was a drift.
Q. Drift?
A. Yes, sir.
Q. What is the difference betweeen a drift and a slope, in a general way, so we—
A. A drift mine goes in on the hill level. In other words, you find the outcrop of the coal and follow the coal in. A slope, you go in from the top through rock or whatever it is.
Q. In other words, a drift mine, you head straight in?
A. Yes, sir.
Q. And drive a tunnel?
A. Yes, sir.
Q. A straight tunnel?

A. Yes, sir.

Q. And after you get in you turn rooms off the heading?

A. Turn rooms off the heading.

Q. You call them stopes in ore mines and rooms in coal mines?

A. Yes, sir.

Q. That is the difference?

A. Yes, sir.

Q. How long were you at number 4?

A. I was there about a year.

Q. Then where did you go?

A. Sango.

Q. Where is it located?

A. It is an ore mine located between Ishkooda and Wenonah, about between 11 and 10.

Q. By what company was Sango operated?

A. I think it was Tutwiler Coal Company at that time.

Q. That is—

A. Bonnyman.

Q. Was that a drift mine or a slope mine?

A. That was a slope.

Q. You worked there about how long?

A. About a year, maybe a little better, about 18 months, I imagine,—12 or 18 months.

Q. Do you recall at that time whether you were working so many hours a day or what?

A. Ten hours a day.

Q. Ten hours a day?

A. Yes, sir.

Q. And how long did you say you worked there?

A. Between 12 and 18 months, something like that.

Q. Was all the work you did at Sango mining coal, or were you at work on the surface crew?

A. I was on the surface crew a while.

Mr. Harris:
I thought that was an ore mine.

Mr. Burr:
It is an ore mine. Did I say coal?

Mr. Harris:
Yes, sir.

Q. You say you worked on the surface there?
A. Yes, sir, as a car repairer.
Q. When you were working at Sango, when did your day's work start?

Mr. Harris:
As I understand, all through the case I have my objection to everything that happened before 1938.

Mr. Burr:
Yes, sir, that is understood.

The Court:
It is understood.

A. It started when we got underground to our working place.
Q. At your working place?
A. Yes, sir.

Mr. Brodie:
Your Honor, may I have a special objection to this?

Mr. Burr.
Yes, sir, he may have any objection he wants as far as I am concerned.

Mr. Brodie:
I am not sure to what extent Mr. Harris' objection goes.

The Court:
You mean you object—

Mr. Brodie:
I object to this question in regard to this witness working at Sango.

The Court:
I overrule the objection.

Q. I will ask you to state whether or not either the miners or the serviced crews at Sango received any pay for the time they spent in traveling to and from their working places?
A. No, sir.

Mr. Brodie:
I object.

The Court:
Overruled.

Mr. Burr:
Did Your Honor get the answer?

The Court:
No, I did not.

Q. What was your answer to that, Mr. Brown?
A. Did not.
Q. How did you get to your place of work at Sango?
A. All the men walked the manway at that time.
Q. Do you recall about how far down the manway was at that time when you worked there?
A. Very little work had been done, Mr. Burr, in Sango Mine, and I couldn't say just how far it was.
Q. About how far in your best judgment?

A. I would say the bottom of the slope was about 1200 feet, something like that.

Q. You say you walked down the manway. How did that run with reference to the slope?

A. Right parallel with the slope.

Q. Parallel with the slope?

A. Yes, sir.

Q. The haulage of the ore and material was through the slope?

A. Yes, sir.

Q. And after they got down the manway how did they get to their working places?

A. They walked to their working places.

Q. Was that the practice while you were at Sango?

A. Yes, sir.

Q. Did you have a bath house at Sango?

A. No, sir, didn't have any bath house at all.

Q. Had to bathe at home?

A. Had little shacks around and bathed in buckets and tubs.

Q. At Sango how did you get your tools you used in your work?

A. Me being outside, Mr. Burr, we carried our tools with us.

Q. Do you know how the miners got their tools at Sango?

Mr. Harris:

He was very seldom down there. Unless he knows himself, we object.

The Court:

He said he worked on the surface?

Mr. Burr:

He said he worked some underground.

Q. How long did you work underground, Mr. Brown?
A. Very little.
Q. Well, a week or a month or what?
A. Not over a month.
Q. While you were working there how did you get your tools?
A. We carried our tools from the outside while we were working underground.
Q. You carried them from the outside tool house?
A. Yes, sir.
Q. Down the manway into the mine?
A. Yes, sir.

The Court:
What is the manway? Is that a passageway parallel with the slope?

Mr. Burr:
Yes, sir, it is parallel with the slope as he explained just now.

The Court:
Yes, sir.

Q. Just about how far is the manway, the mouth of the manway, from the slope at Sango; about how far is it?
A. I imagine it was about a hundred feet.
Q. About a hundred feet?
A. Yes, sir.
Q. Was that manway used for any purpose other than the men walking up and down in?
A. Men and mules.
Q. Men and mules?
A. Yes, sir.
Q. You had mule transportation then?
A. Yes, sir.

Q. You were there, as I understand, about two years—

A. Something like that.

Q. —and did about a month's work underground and the balance outside?

A. Yes, sir.

Q. Where did you go from Sango?

A. Back to Brookwood.

Q. Back to coal mining?

A. Yes, sir.

Q. Were the conditions the same there as when you worked there before?

Mr. Harris:

We object. It doesn't make any difference what the conditions in the coal mines were.

The Court:

I think so.

Mr. Burr:

We are not raising it at this time. I think when we get to it we can show Your Honor it is material in this case, but I will avoid it for the present and respectfully except to Your Honor's ruling.

The Court:

All right.

Q. About when did you leave Brookwood? How long did you stay there the second time?

A. I left Brookwood in 1915.

Q. Where did you go then?

A. The Wenonah Division.

Q. That is the Wenonah Division of the Tennessee Company?

A. Yes, sir.

Q. Do you remember what mine you worked in there then?

A. Number 8.

Q. How long did you stay at Wenonah when you went there in 1915?

A. I think I transferred from Wenonah to Ishkooda about 1916, sometime in 1916.

Q. Were you ever back at Wenonah, or was that the last time?

A. The last time.

Q. When you were at Wenonah at that time—You say about a year?

A. Something like a year.

Q. Where did you work in Wenonah?

A. Number 8.

Q. Was that a slope mine?

A. Yes, sir.

Q. What work did you do there?

A. I worked on a service crew.

Q. Is that an inside crew?

A. Inside crew.

Q. What work did you do on that inside crew?

A. Putting down an electric pump.

Q. What other work did you do there?

A. Drilling.

Q. Anything else you did there?

A. Also section foreman.

Q. Anything else?

A. I think that covers about all of it.

Q. Were you ever a driver there?

A. No, sir.

Q. Never was a driver there?

A. No, sir.

Q. All right, sir. That covers your work in Wenonah. That was 1915 to 1916. It was a slope mine, was it?

A. Yes, sir.

Q. How did you get down to the bottom of the slope in that mine?

A. At Number 8?

Q. Yes, sir, during the time you were there.

A. In a skip.

Q. In a skip?

A. Yes, sir.

Q. Was that skip similar to the ones used now in a general way?

A. The same thing.

Q. Were you hauled down in the skip to what they called the underground loading station?

A. Yes, sir.

Q. Then how did you get to your working place from there?

A. We had to walk from the underground loading station to our working places.

Q. Can you give us any judgment, Mr. Brown, about how far the main slope at Wenonah had been driven when you were working there, or can you give us at present?

A. I can give you the place where I was working.

Q. That is what I mean, the place you were working.

A. I would say somewhere between 2200 and 2500 feet, —about 2200 feet.

Q. About 2200 feet?

A. Something like that.

Q. Do you remember the number of the heading you were working in?

A. 68.

Q. 68?

A. Yes, sir.

Mr. Burr:

Of course, later we can get the exact distance by using the map.

Q. You say you think it was about 2200 feet?

A. Yes, sir.

Q. When you got down to 2200 feet about how far did you have to walk before you got to your stope in the heading?

A. It was quite a little distance; I would say six or seven hundred feet.

Q. All right, sir. How about your tools when you were at Wenonah that first time and you were working as a producer in this mine? Where did you get your tools?

A. Our tools were in the heading.

Q. In the heading?

A. Drilling tools were in the heading.

Q. I see. How about your wedges and things of that sort? Were they delivered—

A. Didn't use any at that time.

Q. Didn't use any at that time?

A. No, sir.

Q. At that time in that operation, I will ask you to tell the Court both while you worked on the service crew and also while you worked as a producer, whether or not your wages were computed and paid on the face to face basis, or on what we call the portal to portal basis?

Mr. Harris:

Same objection, if Your Honor please.

The Court:

Same ruling.

Mr. Burr:

Yes, sir.

A. Face to face.

Q. Did you ever hear of this portal to portal until recently?

Mr. Harris:
We object to that as distinctly leading.

Mr. Burr:
Well, I could do—

Mr. Harris:
I don't think it is material when he heard about it.

The Court:
I think so.

Mr. Burr:
We except and offer to show it was not known as portal to portal when he was mining.

The Court:
There is no use saying that. You have proven that.

Q. Tell the Court in your experience what the entrance of the mine has been called—

Mr. Harris:
Wait a minute. I don't understand that question. May I have it read to me?

Mr. Burr:
I hadn't finished it.

Mr. Harris:
Well, I am sorry.

Mr. Burr:
Just read it. Well, I will ask it again.

Q. Tell the Court what the entrance of the mine was known as by the men who worked there?

A. Mouth of the mine.

Q. Mouth of the mine?

A. Yes, sir.

Q. State whether or not you ever heard it referred to as the portal of the mine?

A. No, sir.

Q. After you left there at Wenonah—You left there in 1916, I believe you said?

A. Yes, sir.

Q. Where did you go next?

A. Ishkooda.

Q. While you were at Wenonah that first time, how many hours per day were the men working?

A. Ten hours.

Q. And did they continue working ten hours all the time you were at Wenonah or not?

A. Yes, sir.

Q. State, Mr. Brown, when did you first begin using carbide lamps, if you remember, where you were working when you first began using carbide lamps.

A. The first carbide lamp I ever used was coal digging, coal mining.

Q. Well, in the ore mines?

A. When I came to the Mountain.

Q. Sir?

A. When I came to the Mountain they were using carbide lamps.

Q. Did the men own their own lamps or did the company furnish the lamps?

A. The men owned their own lamps.

Q. Where did they get their carbide?

A. They had a little house close to the mouth where they got their carbide.

Q. Was the carbide handled differently or practically the same as it is now?

A. Practically the same at Wenonah.

Q. Practically the same at Wenonah?

A. Yes, sir.

Q. All right. Did you have a bath house at Wenonah or not?

A. Yes, sir.

Q. Was the bath house—I will see how it was used at Ishkooda when we get to that. Was the bath house used by you at Wenonah in practically the same way it was used when you went to Ishkooda?

A. Yes, sir.

Q. Did you or not use your brass checks,—that is, deposit them when you came to the mouth of the mine, and take them up when you came out at Wenonah just like you have used it at Ishkooda since?

A. Yes, sir.

Q. Now, did you come to Ishkooda to stay permanently —When?

A. Well, I came back to Ishkooda—

Q. When, after leaving Wenonah?

A. After leaving Wenonah I stayed at Ishkooda until 1918.

Q. And then where did you go?

A. Went back to Brookwood

Q. And stayed at Brookwood until then?

A. '22, I think it was.

Q. What was the occasion of you leaving Brookwood?

Mr. Harris:

We object to that. It doesn't make any difference.

The Court:

It doesn't—

Mr. Burr:

If he objects to it, I withdraw it.

The Court:
All right.

Q. Then you came to Ishkooda again when?
A. I came to Ishkooda in 1922, July, 1922.
Q. And that is the time you say you have been there since then?
A. Yes, sir.
Q. What positions have you held at Ishkooda from the time you went there down until now?
A. Just about everything in the mine.
Q. Name some of them?
A. Well, I have watched, pumped, section foreman, driller, timberman, track man, assistant mine foreman and then mine foreman.

Mr. Harris:
I can't hear him.

Q. Talk louder.
A. And then mine foreman.

The Court:
How long did you say you had been at Ishkooda the last time?

Mr. Burr:
Since 1922.

The Witness:
Since 1922.

Q. And you are still there as mine foreman at the present time?
A. Yes, sir.
Q. During that period of time since 1922—when you went there in 1922, how many hours a day were the men working?

A. Working ten hours.

Q. Was there any change in that ten hours?

A. Yes, sir.

Q. When was the change made and what did it amount to?

A. Not until the Coal Code went into effect, and then they went on eight hours.

Q. When the Coal Code went into effect they went on eight hours?

A. Yes, sir.

Q. Do you recall what year that was, Mr. Brown, about?

A. It was 1933.

Q. 1933?

A. Yes, sir.

Q. Since then have they been on eight hours?

A. Yes, sir.

Q. Has the same method of transportation in getting to the place of work been there at Ishkooda ever since you have been there in a general way?

A. Yes, sir.

Q. What was the difference in going in and coming out of the mine when you had a ten hour day as contracted with the eight hour day? Did you go in the mine at a different time or at the same time?

A. We would go in the mine at the same time.

Q. Go in the mine at the same time?

A. Yes, sir.

Q. Did you come out at a different time?

A. Yes, sir.

Q. Did you come out later when you were on ten hours?

A. We came out later when we were on ten hours.

Q. Let's get it down to eight hours and use that as an illustration of how the thing is worked. What mine at Ishkooda are you foreman of?

A. Number 11.

Q. All right, sir. Suppose we take a miner at Number 11. After he had changed his clothes at the bath house during this period of time where did he go?

A. Go to the tally house.

Q. Go to the tally house?

A. Yes, sir.

Q. That is at the mouth of the mine?

A. At the mouth of the mine, yes, sir.

Q. Did he get any materials or things before he went in the mine?

A. No, sir.

Q. Did he get his carbide?

A. Carbide.

Q. Where did he get the carbide in this mine?

A. At the tally house.

Q. Where did he get it?

Mr. Harris:

What time are you referring to?

Mr. Burr:

Referring to the whole period.

Q. It is practically the same thing practically all the time?

A. Practically the same thing.

Q. How did he get the carbide?

A. He would go to the timekeeper or some man designated to issue carbide and give his number and receive the carbide.

Q. How did he receive it?

A. Pound and a quarter can. I think that is what they were.

Q. How often did he get the carbide?

A. Every day. Sometimes a can would last more than one day.

Q. Depended upon how they used it?

A. Yes, sir.

Q. How much time did it take a man to get his carbide?

A. Just a few seconds.

Q. After he got his carbide, if he needed carbide that day, what did he do then?

A. Wasn't anything more to do except go underground.

Q. What did he do before he went and caught the skip?

A. Deposited his check.

Q. Who was that check turned over to?

A. That check was turned over to the mine foreman.

Q. You are a mine foreman. It was turned over to you when you were on duty; is that right? Just tell me in a general way—

Mr. Harris:

He didn't answer that question.

Mr. Burr:

Yes, he did.

Mr. Harris:

When you asked him who he turned it over to, he didn't answer.

Mr. Burr:

He said to the mine foreman.

Mr. Harris:

Yes, but when you said to him, he didn't answer it.

Q. Well, you were the mine foreman?

A. Yes, sir.

Q. When the check was turned over to you what did you do with it?

A. I placed it on the check board. They have the heading numbered on the board, and these checks were placed on the check board.

Q. How long did you stay there at the tally house when the men went underground?

A. Oh, something like forty-five minutes.

Q. Did you or not stay there until the men had all gone in?

A. Ride the last trip inside.

Q. Did you do anything towards supplying any vacancies the check board showed in the crews?

A. We had to supply the vacancies.

Q. How did you do that?

A. After the men went down, if there were any vacancies, we had to supply the vacancies underground.

Q. How did you do that?

A. There was always an assistant mine foreman underground, and we would give him the vacancies.

Q. How did you give them to him, holler down or what?

A. Usually over the telephone.

Q. And then the assistant mine foreman, when he got below, would send a man to supply this vacancy that he had been told to fill by you?

A. Yes, sir.

Q. Was that the way it was handled all the time?

A. Yes, sir.

Q. And then when you would finish that you would go about your work in the mine?

A. Yes, sir.

Q. How much of the mine did you have supervision over?

A. The whole mine.

Q. The whole mine?

A. Yes, sir.

Q. Did you have an assistant mine foreman?

A. Yes, sir.

Q. How many did you have?

A. Just one.

Q. Just one assistant?

A. Yes, sir.

Q. Did each service crew have a foreman over them?

A. Yes, sir, each service crew had a foreman.

Q. All right. Who—did each producing crew have a foreman over them?

A. A head miner.

Q. When was that foreman designated a head miner?

A. In 1936 when the incentive plan went into effect.

Q. In 1936?

A. Yes, sir.

Q. Previous to that time what did they call that man?

A. Section foreman.

Q. All right. After the miner had deposited his check and got on the skip, where did he go?

A. He went to the unloading station or loading station underground.

Q. Was he or not while going down in the skip riding on the same skip with his foreman or not?

A. Some of them were and some of them were not.

Q. That just depended on how they took the skips?

A. Yes, sir.

Q. Was he subject to any orders or instructions about his place of work from his foreman about—

Mr. Harris:

We object to that question, may it please the Court, calls for a conclusion, hearsay.

Mr. Burr:

I don't think it is hearsay.

The Court:

Overrule it.

Q. Did you understand that question, Mr. Brown?

A. Read it.

Q. I will put it this way: Did or not his foreman have any supervision over him as he rode down in the skip?

Mr. Harris:
We object.

Mr. Quinn:
That calls for a conclusion.

The Court:
I think it is a conclusion.

Q. All right. Did the foreman give any instructions to him as he went down in the skip?

Mr. Harris:
We object.

The Court:
I think the best way is to let him tell what the foreman did.

Q. All right. Tell what the foreman did going down on the skip?

A. That would be a hard matter for me to say. I didn't ride the skip with them.

Q. You didn't ride the skip with them?

A. No, sir.

Q. After they got underground, where did they go to, the producing miners?

A. They went to their working places.

Q. How did they go?

A. Walked.

Q. At what time—Previous to May 1, 1941, at what time did the first skip leave the mouth of the mine at your mine?

A. It would be about 6:09 or 6:10, something like that.

Q. And then about how many skips went in succession after the first one?

A. There were three or four skips.

Q. Three or four skips?

A. Yes, sir.

Q. Was the same skip used going back down and returning, or did you have—

A. Yes, sir.

Q. I see. About what interval of time was there between the leaving times of the three or four trips the skip made from the top?

A. There was about nine or ten minutes between trips.

Q. What time, prior to May 1, 1941, did the work day begin at the place where the ore was produced?

Mr. Harris:

We object to that, if the Court pleases. That is the question the Court is to decide.

Q. What I mean by the workday, at what time did the computation of the man's wages begin?

Mr. Harris:

Well, computation—Of course, we object to everything that happened before 1938.

Mr. Burr:

You have that from now on to the end of the case as far as that is concerned.

Mr. Harris:

Yes.

Mr. Burr:

So there is no use repeating that and interrupting me.

Mr. Harris:

I didn't intend to interrupt you, but the question of computing the time, and who computed the time,—the men had nothing to do with the computation of time.

The Court:
Overruled.

Q. What time did the computation of the time on which the men were paid begin?
A. 6:45.
Q. Was that or not true of both the producing crews and the service crews?
A. The same thing.
Q. Now, the producing crews, at what time did they actually begin work in the working places, in the stopes?

Mr. Harris:
We object to that again, if the Court please, as to what time—

Mr. Burr:
I mean the work in that particular stope.

Mr. Harris:
We object to the question as to what time they actually began work, because in the first place it is impossible for this gentleman to have been all over the mine.

Mr. Burr:
That is true.

The Court:
That is true.

Mr. Harris:
He didn't go down there with them; he didn't walk with them.

The Court:
That is true. I sustain the objection.

Mr. Burr:

We except, if Your Honor please. Of course, the—the major question here involved is whether or not the beginning of the work is at the mouth of the mine or at the working place.

The Court:

Can't you ask that question?

Mr. Burr:

Can't I ask that question?

The Court:

Can't you ask that question so as to obviate—

Mr. Burr:

Yes, sir, I think I can.

Q. When, under the practice there as you know it, up to May 1, 1941,—what was the practice with reference to the computation and payment of wages—

Mr. Harris:

We—

Q. Was it on what you have described as face to face or working place to working place basis or was it from the entrance of the mine back to the entrance of the mine basis?

Mr. Harris:

We object on the ground that any rule or provision the company used to compute the pay could not amount and operate to nullify an act of Congress and change the law.

The Court:

I will overrule the objection to that and admit it for the purpose of whatever bearing it may have—

Mr. Burr:
Yes, sir, for the purpose of showing what the Congress intended.

The Court:
Overrule the objection.

Mr. Burr:
Crampton,—off the record. I have agreed with you you may have an objection—

Mr. Harris:
You mean I am bothering you in the examination by interrupting you?

Mr. Burr:
Yes, sir.

Mr. Harris:
I didn't mean to do that.

The Court:
There are some objections I would rather have.

Mr. Harris:
Here is my position, Judge. Of course, nothing was further from my thought—

The Court:
I know.

Mr. Harris:
—than to object and bother Mr. Burr. That didn't occur to me.

The Court:
Oh, no. I am sure he didn't think of that.

Mr. Burr:

It takes unnecessary time.

Mr. Harris:

Time isn't everything. There is no use hurrying time if we don't try the case right. We are wasting time if we don't try the case properly. If I don't represent my clients properly, I am wasting time.

My theory is when things come up, the agreement, of course, protects me, and I don't have to be repeating my objection because I am assuming my objection appears, and that applies to everybody, but there are matters that come out if I object there it brings it to the Court's attention. I think it is my duty to bring it to the Court's attention then rather rely on a general agreement.

The Court:

There are some objections I would rather have.

Mr. Harris:

That is what I have in mind.

Mr. Burr:

What I mean is this, and I want to know whether it is going to count or not count—

The Court:

What we mean, Mr. Burr,—

Mr. Burr:

He objects to that because it happened before that time. I thought we had an understanding he had an objection on that ground. We have the agreement, and I want to know if it is going to operate. If he is going to object, let him object all the time.

Mr. Harris:

I think you are right on that.

Mr. Burr:

All right. Will you read the question.

(Thereupon the reporter read the question last propounded as above recorded.)

Q. Will you answer that question, please, sir?

A. Face to face.

Q. I will ask you whether or not there has been ever in your experience in the mines any other basis used than the one you have just described?

A. No, sir.

Q. That is true of your whole mining experience?

A. Yes, sir.

Q. When the producing miner got there to his working place in the morning,—we will use the morning shift as an illustration,—was the juice, as you call it, turned on at any time, and if so, at what time was the juice turned on, the regular time for turning it on?

A. At 6:45.

Q. At 6:45?

A. Yes, sir.

Q. Now, what about—was there any lunch period taken out during this period of time?

A. No, sir, not after—prior to May 1, 1941?

Q. Yes, sir.

A. The lunch period was taken out at that time.

Q. Well, how about—

A. After we went on eight hours.

Q. After you went on eight hours?

A. Yes, sir.

Q. How long was taken out for lunch?

A. Thirty minutes.

Q. Was that period of time part of the man's daily work, the thirty minutes, or was that not a part of the man's daily work?

A. It wasn't.

Q. It was not a part?

A. It wasn't, no.

Q. At what time, as part of your daily work, was the shooting?

A. It was at 3:15. The generator would be shut down and the juice turned off at 3:10.

Q. At 3:10?

A. Yes, sir.

Q. Who had charge of doing the shooting in a producing crew?

A. The men in charge would be the head miner or section foreman and the drill runner.

Q. The loading part of the crew had nothing to do with the shooting, is that right?

A. Not unless he was called on to assist in some way.

Q. Assist?

A. Yes, sir.

Q. Usually, did they not leave the place where the work was being done, the stopes, before the shooting occurred?

A. Yes, sir, certainly did.

Q. Where did they go when they left their place of work?

A. To the loading station.

Q. To the loading station?

A. Yes, sir.

Q. Was there any provision made there for them in waiting for the cars at Number 13?

A. Number 11, you mean?

Q. Number 11.

A. We had benches there for them to sit on.

Q. And at what time did the first skip start out?

A. The first skip started out at 3:15.

Q. And continued on as they came in?

A. Yes, sir.

Q. The men getting on them in the order they were lined up there?

A. Yes, sir. The mine foreman or assistant mine foreman counted out the men.

Q. Now, when you went to Ishkooda in 1922,—was that the year?

A. '22, yes, sir.

Q. Do you recall what heading the mine had been extended to at that time, about what heading you first worked in there, the number of it?

A. I believe—49, I think, was the bottom heading at that time.

Mr. Burr:

Mr. Cameron, would you take a ruler and give us the distance 49 is?

Let him do that. Let him give the exact distance rather than have it guessed at.

Q. Was it 49 you worked in when you went to Ishkooda in 1923?

A. That was the bottom of the slope at that time.

Q. That is what I wanted to get, the bottom of the slope.

Mr. C. B. Cameron:

About 3000 feet.

Q. Is that your best recollection?

A. I think that was the bottom of the slope then. I wouldn't be positive.

Q. Where is the bottom of the slope now?

A. Well, it is at the pocket now, as far as that is concerned. That is 67.

Q. Is it right at 67 or below 67?

A. About 200 feet below.

Mr. Burr:

Will you give us the measurement of that, Mr. Cameron, by the map?

Mr. C. B. Cameron:
About 6500 feet.

The Court:
About how far?

Mr. C. B. Cameron:
About 6500 feet.

Q. During that time have the headings been driven further too?

A. Yes, sir. We have the haulage ways now.

Q. What do you mean by having the haulage way now?

A. We have our central dump place and dump into the pocket, and have the haulage way.

Q. That is ore haulage way and material haulage way?

A. Yes, sir.

Q. The men continue to walk, do they?

A. Still continue to walk the same.

Q. Do you remember about how far from the main slope the furtherest heading was in that mine when you went there in 1922?

A. I think it was 3000 feet.—49.

Q. I understood 3000 feet was the distance from the top.

A. Yes, sir.

Q. What I want to know is how far—at right from the slope the headings had been driven at the time you went there?

A. The furtherest heading?

Q. Yes.

The Court:
What did he say?

Mr. Burr:
He asked me if I meant the furtherest heading, and I told him yes, the furtherest heading.

The Court:
Your question is you want to know laterally?

Mr. Burr:
Yes, sir.

Q. I want to get the walking distance, then, as compared with now.
A. It was about 700 feet.
Q. About 700 feet?
A. Six or seven hundred feet.

Mr. Burr:
Mr. Cameron, will you give us the distance the furtherest one is now?

Mr. Cameron:
You mean the heading?

Mr. Burr:
Yes, sir.

Mr. Cameron:
The furtherest heading?

The Court:
You mean the heading?

Mr. Burr:
Yes, sir; how far the furtherest heading is now.

Mr. Cameron:
About 1750 feet.

Mr. Burr:
I see.

Mr. Harris:
You mean from where, Mr. Cameron?

Mr. Burr:
From the slope.

Mr. Cameron:
From the pocket.

The Court:
You mean from the slope?

Mr. Cameron:
The pocket is at the slope.

Mr. Burr:
The pocket is at the slope.

Mr. Cameron:
The central dump point. That is at this point right here (indicating on map).

The Court:
Do you want Mr. Cameron any more?

Mr. Burr:
No, sir, not right now.

The Court:
Have a seat, Mr. Cameron.

Q. Now, Mr. Brown, we have been talking so far about the place where the producing crews work. Where did the service men, track men and men who perform that sort of work, where did their day's work begin?

A. They got their tools from the underground tool house.

Q. At what time was that done?

A. 6:45.

Q. 6:45?

A. Yes, sir.

Q. The underground tool house was where their time began?

A. Yes, sir.

Q. And when did their time run out in the afternoon the way it was computed and paid?

A. The same, at—

Q. Three—

A. —3:10. Of course, they had to come out of the heading before that time on account of the shooting.

Q. They all had to leave the heading before the shooting?

A. Yes, sir.

Q. What time did they customarily leave the headings, the service crews?

A. I would say some of them would begin to leave at 2:30 to come out of the headings.

Q. Now, I want to ask you, during this period of time, about the tools for the producing crew. The—among the tools you had, so I can ask you about them separately,—each producing crew had a heavy drill, did it not?

A. Yes, sir.

Q. And the drill steel that went with that drill?

A. Yes, sir.

Q. Now, where was that material delivered and by whom was it delivered to the stope?

A. The drills are left in the headings, and then the steel was sent up in the headings to the—

Q. Well, who was it sent by?

A. Well, when we had the drivers they would pick it up at knuck, the trammers, and take them up in the headings.

Q. Were the drivers and trammers company men or members of the producing crew?

A. They were members of the producing crew.

Q. Who did you say the ones that carried the tripod drill and heavy steel—what crews did they belong to?

A. They belonged to the drill crew, heading crew.

Q. Did the heading crew carry its materials up to the working place?

A. They were at the working place.

Q. Who delivered them at the working place; how did they get there?

A. Well, the drill and tripod and hose pipe stayed in the heading all the time.

Q. Do you mean you already put them there? They didn't get there by themselves? Who—

A. The service crews put them there.

Q. That is what I was trying to find out. Is that true of the heavy drill also?

A. Yes, sir.

Q. All right, sir. How about the jackhammer? Was that another tool used by the producing crew?

A. That is another tool used by the producing crew.

Q. How did the jackhammers get into the stopes?

A. The same way; sent in by the service crews.

Q. How about the air pipe and the rubber hose?

A. They were the same way.

Q. Now, then, I want to ask you if these tools were also used in there, and I will call them off so we can remember—you had short steel for the jackhammer?

A. Yes, sir.

Q. And had wedges that were used for the purpose of wedging in the jackhammer?

A. The hanger.

Q. I mean the hanger?

A. Yes, sir.

Q. You had hangers?

A. Yes, sir.

Q. You had C-hooks?

A. Yes, sir.

Q. That was what the rope—skidder rope was fastened on?

A. Skidder block.

Q. I want to ask you about those tools. Where were they kept by the company?

A. They were kept at the tool house, hangers and wedges and C-hooks.

Q. Where was the tool house located?

A. The tool house at the present time is located at 66.

Q. Where was it located prior to May 1, 1941, the same place or a different place?

A. The same place, I think.

Q. How did those tools get to the tool house? Where did they come from to get to the tool house?

A. They were sent underground by the larry. In other words, we made out the requisition and sent it to the warehouse--

Q. You say we did. Who made out the requisitions?

A. I did.

Q. The mine foreman?

A. The mine foreman.

Q. You would send it to the warehouse by whom?

A. The messenger boy.

Q. All right. What did the warehouse do when they got your—requisition for these things?

A. They sent them down to Number 11, on top, by a surface crew.

Q. A surface crew?

A. Yes, sir.

Q. That was an outside crew?

A. Yes, sir.

Q. What did they do with it when they got it to the mouth of Number 11?

A. They would unload it and there was a surface crew that loaded it, and it was hauled underground by the service crew.

Q. Was that a service crew that would haul it underground?

A. A service crew.

Q. Where did they unload it?

A. At 66.

Q. Is there something down there you call a running board?

A. Yes, sir.

Q. What is that running board?

A. That is where you unload material and men walk up and down.

Q. How does it get from the running board to the tool house?

A. Men carry it out there.

Q. What men?

A. Pipe men. There are other men designated sometimes to carry things out.

Q. The men who carry it to the tool house, are they service crews or producing crews?

A. They are service crews.

Q. And when it gets to the tool house how does it get to the stope?

A. Miscellaneous fittings, men get them there at the tool house, such as small miscellaneous fittings, such as—

The Court:

I didn't hear it.

Mr. Burr:

He said small, miscellaneous tools the men got at the tool house.

The Court:

I heard that, but he heard something else.

Mr. Burr:

He was telling what they were.

The Court:

I didn't get that.

Q. Tell what they were.

A. Small miscellaneous tools and fittings. The heavy material is sent to the heading.

Q. By whom?

A. The service crews.

Q. Has that been the practice?

A. Yes, sir.

Q. All along?

A. Yes, sir.

Q. What about the wedges and hangers?

A. Some member of the crew stops and gets them.

Q. Get them where?

A. At 66, at the tool house.

Q. Did the company have provisions for carrying them up in the stope if they needed them up in the stope?

A. They were carried up there by some member of the crew.

Q. By some member of the crew?

A. Yes, sir.

Q. Did all of them carry them or some member of the crew stop by and get them?

A. Some member of the crew stopped by and got them.

Q. What tools were those?

A. Hangers and wedges, short steel.

Q. How long would you say that custom has been in effect there?

A. Ever since I have been there;—ever since drags have been there.

Q. That is since 1922?

A. Yes, sir.

Q. I want to ask you again—wait just one minute before I ask you this final question.

Now, this tool house, Mr. Brown, is it locked or not locked?

A. Yes, sir, it is locked.

Q. Who has charge of locking it after the—

A. The pipe men lock it.

Q. The pipe men?

A. Yes, sir.

Q. And what time is it locked?

A. It is supposed to be locked at 3:15—3:10.

Q. 3:10,—between 3:10 and 3:15 sometimes?

A. Yes, sir.

Q. Before the other shift comes on?

A. Yes, sir.

Q. Is it locked before the other shift comes on?

A. Yes, sir.

Q. Now, is there anyone there—what is at the tool house after the beginning of the shift?

A. Yes, sir; after the beginning of the shift the pipe man stays there and gives out things.

Q. The pipe man stays there?

A. Yes, sir.

Q. Now, what time does the pipe man unlock the tool house?

A. He has instructions to unlock it at 6:45.

Q. Of course, you are not there you are upstairs?

A. Yes, sir.

Q. And one man comes down and gets these small fittings?

A. Yes, sir.

Q. I will ask you if they are up in the stope and run out of tools they send to the tool house?

A. Sometimes they do.

Q. Have they the privilege of doing that whenever they want to?

A. Yes, sir.

Q. In doing that, of course, they come down to the tool house and get the tools and go back to the stope with them?

A. That is right.

Q. Now, about the repairs on these heavy tools, the tripod for the drill, the drill,—when they wear anything of that sort out, the jackhammer and the heavy tools you have described, who handles repairing them or sending in new ones to take the place of the ones that are worn out?

A. Drills are repaired outside.

Q. But who comes and gets them and takes them out?

A. Usually sent out by the service crews, who get the steel—

Q. They go to the stopes to get them?—

A. Go to the sidetrack and get them and take them out to be sharpened.

Q. The steel is all that has to be sharpened?

A. Yes, sir.

Q. How about the tripod for the drill and the drill if that has to be repaired?

A. It is handled in the same way.

Q. Handled in the same way?

A. Yes, sir.

Q. That is true of all the heavy stuff?

A. Yes, sir.

Q. Were any of the tools, light or heavy, within your knowledge, carried down in the skip on the mantrip?

A. No, sir.

Q. Now, what you have told us is the way the thing has been handled ever since you have been there?

A. Yes, sir.

Q. Ever since you have been there, since 1922?

A. Yes, sir.

Q. I will ask you if at any time during that time, within your knowledge, there has ever been any payment of either part of the traveling time or all the traveling time to the men?

A. There has not.

Q. Has there been to your knowledge any request or discussion among the men themselves asking for that to be paid?

Mr. Harris:
We object to that, if the Court please.

Mr. Burr:
It is material.

Mr. Harris:
It is clearly hearsay.

The Court:
Well, if he knows.

Mr. Burr:
I am asking him within his knowledge.

The Court:
You can ask him—

Mr. Burr:
If they had any complaints they would naturally go to the mine foreman.

Mr. Harris:
Mr. Ball said all negotiations were handled with him.

Mr. Burr:
I didn't ask about negotiations.

The Court:
He said whether the men had discussed it with him?

Mr. Harris:
Not with him. He said whether the men had discussed it among themselves.

Mr. Burr:
No; with him.

Q. I will put it this way, Mr. Brown: State whether or not, while you have been connected with these mines, and while you have been mine foreman, any of the underground miners, underground workers have at any time complained to you or discussed with you or presented to you that thought that they ought to be paid for the traveling time or any part of the traveling time?

Mr. Harris:

We object, because he would not be the proper person for them to talk to or complain to or make the request of. The undisputed testimony shows that Mr. Ball—

The Court:

That is true, but I will overrule the objection.

A. Have not.

Mr. Burr:

That is all for Mr. Brown.

Mr. Harris:

Mr. Brown,—

The Court:

Wait a minute. We will take a recess for a few minutes, —ten minutes.

(Whereupon, proceedings were in recess from 10:45 A. M., to 10:55 A. M., when proceedings were resumed as follows:)

The Court:

All right.

Cross Examination.

(By Mr. Harris):

Q. Mr. Brown, what kind of explosive was used in the mine from October, 1938, to May 1, 1941, to break the ore?

A. Stick powder.

Q. Is that what is commonly known as dynamite?

A. Yes, sir.

Q. How big are those sticks?

A. An inch and a fourth.

Q. In diameter?

A. Yes, sir.

Q. And how long are they?

A. About 6 inches.

Q. What will a stick weigh?

A. I couldn't say about that.

Q. How many—how do the sticks of dynamite come?

A. In boxes.

Q. How many sticks to a box?

A. Average about 145.

Q. How much does one of those boxes weigh?

A. 50 pounds.

Q. Where is the dynamite kept, that is, the stick powder, as you call it?

A. It is kept in the powder house underground.

Q. And where is the powder house underground?

A. At 64.

Q. How far is the powder house from the man unloading station or hoodlum?

A. About—I would say 100 to 150 feet.

Q. Now, is there one man—

A. About 100 feet, I imagine.

Q. About 100 feet. Now, is there one man whose duty it is to stay there at the powder house all the time?

A. Yes, sir.

Q. What is that man called?

A. The powder man.

Q. Now, is the powder house the same as the underground supply house, or is that a different thing?

A. The underground supply house where he gets drill supplies and such as that is not.

Q. Now, at the time about which I asked you, was the underground supply house right next to the powder house underground?

A. No, sir.

Q. How far is the supply house from the powder house?

A. About six or seven hundred feet.

Q. The powder man goes down on which man skip? The first one?

A. Well, not necessarily; just whatever trip he wants to ride.

Q. Now, when he goes down he issues powder to the men—

A. No, sir.

Q. —when they ask for it?

A. Not at that particular time; no, sir.

Q. What?

A. Not at that time; not when he goes down.

Q. Who is charged in a drill crew with the responsibility for the powder,—in a mining crew?

A. You mean carrying the powder?

Q. No; isn't it charged against the mining crew?

A. Yes, sir, charged against the mining crew.

Q. And taken out of the pay?

A. Charged against the mining crew.

Q. Who is it charged against, the head miner or drill foreman or all of them together?

A. The entire crew at the present time.

Q. Who was it from 1938 to May 1, 1941?

A. The head miner and the drill runner.

Q. The head miner—

A. The head miner was in charge of the heading crew.

Q. He was charged with the powder, and how long did that situation last that he was charged with the powder?

A. Well, the heading crew was charged with the powder,—the head miner was charged with the powder of that crew, but there was some little change after May 1, 1941.

Q. What was the change?

A. Each member of the crew would share on the powder.

Q. And, before that, they did not?

A. Did not.

Q. Now, you mean by sharing it that they were charged a cost of the powder; that is what you mean? If you nod, I am afraid these gentlemen wouldn't get it.

The Court:

Don't nod. Answer so you can be heard, Mr. Brown.

A. Yes, sir.

Q. Now, then, how many sticks of powder are used in the run of a day by a drill crew or mining crew?

A. Well, that is hard to say of one crew. It would be hard to say what he uses. It depends on the drilling he gets done.

Q. Well, an average day's drilling in the average size stope or heading?

A. I would say around 250 sticks of powder.

Q. Around 250 sticks of powder, so that would mean that it would be about 70 pounds of powder that are used during the run of the day by one drill crew?

A. Something like that, yes, sir.

Q. Now, then, does the head miner pick up his powder at the powder house, or does the head miner and the drill helper pick up the powder at the powder house?

A. The drill helper and usually one of the drill runners are sent back to the powder house during a shift.

Q. Isn't it also a fact that they very frequently, as they go through, stop off at the powder house and pick up the powder and carry it on up to the face with them?

A. No, sir, it is not.

Q. You mean the powder is not even issued at that time of day?

A. Not in the morning, yes, sir.

Q. When does powder begin to be issued?

A. After, I would say, twelve o'clock or one o'clock; powder begins to be issued after, I would say, twelve o'clock or one o'clock.

Q. Twelve or one o'clock?

A. Something like that.

Q. You mean the drill helper or some other man is sent by the head miner down to the powder house for his powder and they start issuing it about one o'clock—

A. Yes, sir.

Q. —and that man carried it back up to the place where the holes have been drilled?

A. To the working place, yes, sir.

Q. Has that been the rule all the time out there? Now, you have been—

The Court:

What is your answer?

The Witness:

Yes, sir.

Q. You have been in this one mine steadily now since 1922, haven't you?

A. No, sir, I have not, not since 1922.

Q. Since 1924?

A. No, sir.

Q. Well, I got a false impression. How long have you been at this one mine now? Let's get that straight.

A. Well, I couldn't say just exactly how long I have been at that one mine, but I have worked at both places in Ishkooda Division.

Q. What do you mean by both places?

A. There are 13 and 11. I have worked at both places.

Q. Well, you are mine foreman at Number 11 now?

A. Yes, sir.

Q. All right. How long have you been mine foreman at Number 11?

A. Let me see. I think it was 1938 when I went there this time.

Q. You went to Number 11 in Ishkooda in 1938 as mine foreman. Have you been mine foreman continually in that mine since 1938 up to the present time?

A. Yes, sir.

Q. Before 1938 where were you working, just before 1938?

A. I was working at 13, I am sure.

Q. All right. How long was it that you worked at 13 before you went over to 11 as mine foreman?

A. I couldn't say just exactly.

Q. Can you give us any idea at all?

A. I imagine I was up there something like a year,—something like that.

Q. What kind of job did you have up at 13 during that year?

A. I was assistant mine foreman.

Q. Who was your mine foreman up there?

A. Mr. Smith.

Q. Is he still working for the company?

A. No, sir.

Q. All right. Then, before that year, where did you work; before you were at 13 as assistant mine foreman, where did you work?

A. I couldn't say. I just swapped from one place to another. I couldn't say just exactly where I was at that time.

Q. You mean you swapped from one company to another company—

A. No, sir.

Q. Or from one place—

A. No, one mine to another.

Q. —to another place in the Tennessee Company?

A. One mine to another. I transferred from one mine to another.

Q. How many different mines of the Tennessee Company have you worked in?

A. Worked in four at Ishkooda.

Q. Four different mines at Ishkooda?

A. Yes, sir.

Q. That is all there are around there?

A. At that time.

Q. What are the numbers of the four mines you worked in at Ishkooda?

A. 11, 12, 13 and 14.

Q. 14 has been abandoned for many years, hasn't it?

A. Yes, sir.

Q. When was the last time you worked in 14?

A. It was in 1924.

Q. Were they using mechanical loaders when you were working in 14?

A. No, sir.

Q. Were they using mechanical loaders in 11 or 12 or 13 in 1924?

A. Not at that time.

Q. When did they start using mechanical loaders at Ishkooda?

A. I think the first came in there in 1925.

Q. When did they get it fixed so all the loading was substantially—substantially all the loading was done by mechanical loaders?

A. It is not altogether done that way now.

Q. It is only when you are doing a little cutting through narrow places you use hand mucking, isn't it, Mr. Brown?

A. Yes, sir.

Q. My question is when did substantially all the loading begin to be done by mechanical loaders?

A. It must have been about '26-or-7.

Q. About '26-or-7. Now, up until the time you had mechanical loaders, you didn't have any need for hangers and C-hooks at all, did you?

A. Not until the loaders were put in.

Q. Not until the loaders were put in?

A. No, sir.

Q. Now, those hangers and wedges and C-hooks break and wear out very rapidly, don't they?

A. Yes, sir.

Q. And do you have an underground repair shop, or is the repair shop out on the surface?

A. The repair shop is out on the surface.

Q. And is that repair shop run by the company?

A. Yes, sir.

Q. And how far is the repair shop from the mouth of the mine at Number 11?

A. It is better than a mile, I imagine.

Q. And the repair shop is opened at what hour?

A. 6:30, I think it is.

Q. Do you know? Do you know?

A. I am sure that is what it is.

Q. Have you ever been down there at the repair shop to see when it opened, or to check up on it?

A. Yes, I have been there.

Q. When was the time you did that?

A. It has been some time since I—

Q. How many times did you check the repair shop to see when it was opened?

A. I never did check it. I have been there when it was opened.

Q. I mean how many times did you check the repair shop to see when they opened up the repair shop in the morning? Have you ever done that?

A. I have been there when they would open it.

Q. You have been there when they would open it?

A. Yes, sir.

Q. How many times have you been at the repair shop in the morning?

A. I couldn't say how many times.

Q. Two or three times in the course of your work there?

A. Yes; more than that.

Q. Your principal place of duty is up at the portal, isn't it, at the place where the slope comes out at the top of the ground?

A. Yes, sir.

Q. Now, up at the mouth of the mine you have a timber station?

A. No, sir.

Q. Supplies of timber? Where are they kept?

A. Timber is kept underground. We have a place outside where timber is loaded and sent underground.

Q. Yes. Where do the timbers come from before they are put on a conveyance to go down into the mine itself? Where is your storage ground—

A. It is about—

Q. —or your storage place for your timbers?

A. About 300 feet from the mouth of the mine.

Q. Is that what you call your timber yard?

A. That is the timber yard.

Q. Is there a man that is kept—that stays there in charge of the timber yard?

A. The surface crew is down there. They load our timbers and such as that.

Q. Well, isn't there one man in charge of the whole timber yard?

A. No, sir.

Q. How many different timber crews did you have there at Number 11 from October, 1938, until May 1, 1941?

A. Two.

Q. And how many men constituted a timber crew?

A. There is a foreman and six men.

Q. And either foreman or any foreman of his crew can go there and get out timbers without any record being kept they are taking timbers out of the timber yard?

A. No, sir.

Q. How are they checked out to them?

A. The hauling crew, when they are hauling down, they are checked to me, and we make a requisition for them into the warehouse.

Q. What time—I will ask you this: Is that timber yard fenced in or under lock and key?

A. No, sir.

Q. What time did the timber crew go to work?

A. 6:45.

Q. They show up there at the same time—

A. Underground at 6:45.

Q. You mean underground or on top?

A. Underground.

Q. I mean what time did the timber crew show up at the top?

A. Well, they began to come up there at six o'clock.

Q. And did they start moving timber then?

A. No, sir.

Q. The timber crew would be the ones that would bring the timber from the timber yard to the mouth of the mine, wouldn't they?

A. No, sir.

Q. Who would bring it from the timber yard to the mouth of the mine?

A. Be loaded on a larry by the surface crew and be pulled up by a hoist engine to the mouth of the mine.

Q. Was the loading crew—was there more than one loading crew there?

A. No, sir.

Q. Did that loading crew just load timber all day long?

A. When we were hauling, it did.

Q. Didn't you have to haul timber all the time?

A. No, sir.

Q. How often did you haul timber into Number 11?

A. Well, we would usually haul about one shift a week, haul timber,—not only timber but any material, ties, rails, such as that.

Q. Did you haul that down into the mine on the same kind of car that the men rode in on?

A. Hauled them on a larry, a timber larry.

Q. Did you haul steel down on a timber larry?

A. Yes, sir.

Q. Is that boxed in or an open, flat car?

A. Flat car.

Q. How many men rode down on the timber larry when you were hauling?

A. Not any on the timber larry.

Q. Just loaded it and lowered it into the mine?

A. Ride on the skip; not any on the larry.

Q. The timber larry would be fastened to a skip, a man skip?

A. Yes, sir.

Q. You didn't run any trips for just hauling material down there?

A. Yes, sir.

Q. How many skips did you run out there from 1938 until May 1, 1941?

A. Run three or four.

Q. You mean when you would lower a man trip into the mine there would be three or four different cars on which they could ride?

A. No, sir; just one skip.

Q. When you were hauling ore out of the mine did you all just haul it up out of the mine one car at a time?

A. Hauled a skip; dropped two cars in the skip.

Q. You just pulled on the cable one skip at a time; you didn't pull two or three skips of ore?

A. No, sir.

Q. And never did do that?

A. No, sir.

Q. The skip holds how many cars of the tram cars, the little tram cars of coal—

A. Holds two.

Q. I mean of ore.

A. Holds two now,—about 12 tons.

Q. And that is the same as the man skip, isn't it?

A. The same skip.

Q. And in this car that is big enough to hold 12 tons of ore, how many men would be crowded when they went down in the mine?

A. Not over thirty.

Q. Thirty men. Now, you have ridden down on those skips, haven't you?

A. Yes, sir.

Q. And you have ridden back on the man skip at the close of the day when the men were coming out?

A. Yes, sir.

Q. Does thirty men crowd those skips?

A. Well, it is crowded, but they have got room to sit down.

Q. Some of them—is it at number 11 you have to kneel over to keep your head from being busted?

A. Yes, sir, you have to get your head below the top of the skip.

Q. Have to keep your head below the top of the skip?

A. Yes, sir.

Q. Now, during the time you have been working for the Tennessee Company, they have—the Tennessee Company has published a magazine caled the "Ore Miner" hasn't it?

A. Yes, sir.

Q. And that is published by the company?

A. Yes, sir.

Q. And distributed to the men who work for the company?

A. Yes, sir.
Q. And how often do they get out that little magazine?
A. It comes quarterly now.
Q. It comes quarterly now?
A. Yes, sir.

Mr. Harris:
Your Honor will indulge me a minute?

The Court:
Yes.

Q. I will ask you to look—

Mr. Burr:
Let me see what you are asking about before you—any particular thing in there?

Mr. Harris:
Yes, sir, there are some articles in there.

Mr. Burr:
What is it you want him—

Mr. Harris:—
To identify them.

Mr. Burr:
I know, but any particular thing in there? What is it you are going to offer?

Mr. Harris:
I am going to identify them. I am not putting in anything now. I am merely getting these for identification.

Mr. Burr:
That is all right. Give the dates of them.

Q. Here is a copy of a magazine headed the "Ore Miner", December, 1938, Issue 26, Tennessee Coal, Iron & Railroad Company, Ore Mines and Quarries.

I will ask you to look at that and state if that is the magazine you had in mind when I was talking to you a moment ago?

A. "Ore Miner", yes, sir.

Q. And is that what it purports on its face to be, a magazine issued by the Tennessee Coal, Iron & Railroad Company?

A. Yes, sir.

Mr. Harris:

We ask—

The Clerk:

It will be Defendants' Exhibit Number 5 for identification.

(Thereupon Issue 26 of the "Ore Miner", December, 1938, was marked for identification Defendants' Exhibit No. 5.)

Q. I will ask you to look at another one, "Ore Miner Safety", February, 1940, Issue Number 19.

Mr. Burr:

What is that date, Crampton? I didn't get it.

Mr. Harris:

February, 1940, Issue Number 19.

Q. Tennessee Coal, Iron & Railroad Company, Ore Mines and Quarries, Muscoda Number 6, a picture there on the back of it. I will ask you if that is what it pur-

ports on its face to be, a magazine issued by the Tennessee Coal, Iron & Railroad Company?

A. Yes, sir.

Q. Have you ever been to Muscoda Number 6?

A. Never been in there, no, sir.

Q. Ever been to it?

A. No, sir.

Q. Never seen Muscoda Number 6?

A. Nothing but the tipple.

Q. Is this a part of the tipple? Have you seen that?

A. I have never been there.

Q. You have never been there?

A. No, sir.

Q. All your work for the Tennessee Company has been back and forth between 11, 12, 13 and 14?

A. And Number 8 at Wenonah.

Q. And Number 8 at Wenonah?

A. Yes, sir.

Mr. Harris:

Mark that for identification.

(Thereupon Issue Number 19 of the "Ore Miners", February, 1940, was marked for identification Defendants' Exhibit Number 6.)

Q. There isn't any skip out there, as far as you know that the top of the skip is 6 feet 6 inches from the floor, is there?

A. No, I don't think so.

Q. And you have never seen one where it was—out there at Ishkooda in Mines Number 11, 12, 13 or 14 where the top of the skip was 6 feet 6 inches from the floor?

A. Not on the inside; no, sir.

Q. And every skip you have seen out there, when the men go down in the mines, they have to keep their heads down?

A. They stoop over, yes, sir.

Q. They stoop over or kneel or squat, and they can't have either their heads or arms projecting out?

A. Shouldn't do it, no, sir.

Q. If they do it they will get them knocked off?

A. That is not anything that close.

Q. Ever been anything that close?

A. No, sir.

Q. You know you have had accidents on the man skips where men have gotten hurriedly in the man skip, haven't you?

A. Never have.

Q. Never have?

A. No, sir.

Q. You have never read of such accidents?

Mr. Burr:

We object to whether he has ever read of such accidents.

Q. I mean in the mines of the T. C. I.

Mr. Burr:

We object to that question.

The Court:

Sustained.

Q. Have you ever heard of any accident on a skip in the mines of the T. C. I.?

Mr. Burr:

Object to that question. If he wants to go into that our records on that are available to him and he can get the actual facts.

The Court:

Sustained.

Q. The supply house is how far from the main slope; that is Number 11 I am talking about now? All my questions now are directed to the one you have been working at since 1938.

A. 75 feet, I would say.

Q. And when timber and supplies are carried to the warehouse or supply house from the main slope, they are carried by service crews?

A. Yes, sir.

Q. And during that entire time the supply house has not been more than 75 feet—

A. From the slope.

Q. Now, when Mr. Cameron was measuring up there on the board with a rule, he just put a rule across in a straight line.

When the men, however, are walking from the hoodlum or manloading station to the work face, they can't walk in a straight line, can they?

A. No, sir, not a direct, straight line.

Q. They have to go out to the right a piece, and then turn to the left or turn to the right and dodge a fault—you have a fault there in Number 11?

A. Yes, there is a fault there.

Q. So that a straight line on the map is not a true measure of how far the men had to walk, is it?

A. No, sir, not a straight line, it is not.

Q. Is—excuse me just a moment.

Mr. Cameron measured with a rule up here like this towards the right, and I want to know if there is any mine at all to the left of Number 11 slope?

A. Yes, sir, there is mining to the left of Number 11 slope.

Q. How far does it go over to the left?

Mr. Burr:

At what time?

Mr. Harris:

Now.

A. I don't know; about 1000 feet.

Q. Well, which is the furtherest place that a man would go when he got off at the main slope, go over to the r ght? Would that be the furtherest stope, or go over to the left to the furtherest heading or stope; which would be the greatest distance?

A. To the right.

Q. Have you ever been down there and walked from the man unloading station to the very furtherest stope or heading to the right?

A. Yes, sir, I have walked it.

Q. Recently?

A. Every shift, just about it.

Q. How far would you say in actual walking it is from that main slope to that furtherest heading?

A. It is not over 1700 feet.

Q. 1700 feet. Now, in that walk, is the walking on level ground or is it up and down?

A. It is, you might say, up and down. There is not any —it is all downgrade.

Q. They are walking downgrade all the time going to the heading or stope?

A. To the furtherest heading, yes, sir.

Q. That means they are walking downhill when they are fresh and they are climbing uphill after they have finished their drilling or mucking, doesn't it?

A. That is right.

Q. How far do they have to climb up or down to escape the fault?

A. They don't go around the faults—they go around the faults, but they do have to climb any.

Q. Don't have to climb any of that at all?

A. No, sir.

Q. In your judgment, how much higher is the man unloading station than the furtherest heading—I mean vertically, 200 feet, 150 feet?

A. I just couldn't say.

Q. Have you any idea at all?

A. I imagine it would be 200 feet, something like that, from where the man unloading station is.

Q. So that a man coming out of the heading to the man loading station, in addition to walking a distance of 1700 feet is climbing the equivalent of a 14 to 18 story skyscraper; is that right?

A. I wouldn't say. That is a 5 percent grade coming out of the heading.

Q. 5 percent grade. Now, I am somewhat confused about what you call and what you were asked about as the quitting time. When you were on a 10-hour day when did you shoot?

A. At 4:20.

Q. At 4:20, and then when you went on an 8-hour day you shot at 3:10?

A. 3:10.

Q. Now, I understood you to tell Mr. Burr that both on a 10-hour day and on an 8-hour day you started in the mine at the same time in the morning?

A. Practically the same time.

Q. Practically the same time? Now, the shooting is the last thing that can be done on that shift down there, isn't it?

A. Yes, sir.

Q. Every body has to get out before the fuses are lit?

A. Out of the heading.

Q. I mean before they explode, before the explosions go off?

A. I say—

Q. How many members of a crew light those fuses?

A. Well, there are two,—two to three or four, maybe.

Q. Do they light them with matches or the lamps?

A. With their lamps.

Q. While the head driller and his helper are there lighting the fuses, the muckers, the men who have been operating the loading machine, they have turned and gone on their way out of the mine, haven't they?

A. Gone on out.

Q. I understood you to tell Mr. Burr there have been times when you knew some of the muckers to get through and leave up in the headings and stopes around two o'clock?

A. No, sir.

Mr. Burr:

No, sir; that was the service men.

The Witness:

That was the service men.

Q. That was the service men?

A. 2:30.

Q. When a mucker left up in the stope or heading at 2:30, then he was through mucking for that day, wasn't he?

A. Yes, sir.

Q. Now, then, did he get pay only up to 2:30, or did he get paid for the full eight hours or the full ten hours?

A. Paid for the full eight hours.

Q. Paid for the full eight hours whether he was up there mucking or whether he got through mucking ahead of time?

A. That is right.

Q. And did that rule obtain when they were on a 10-hour day as well as when they were on an 8-hour day?

A. Same thing.

Q. Now, at your mine at Ishkooda, has the company sped up any the getting of the men into the mine since

May 1st over the way it got them in the mine before May 1st?

A. No more than the men come up there earlier.

Q. The skip doesn't run any faster?

A. No, sir.

Q. The round trip is not any shorter?

A. No, sir.

Q. And as far as you can tell the entry of the men into the mines now since May 1st is just like it was for the three years preceding?

A. No, sir; the men go in faster. They come to the tally house quicker.

Q. They come to the tally house quicker?

A. And deposit their checks and go right on down.

Q. Now, have you got one of those checks with you?

A. No, sir.

Mr. Harris: (To Mr. Burr):

Have you got any here?

Mr. Burr:

I will be glad to get you some.

Mr. Harris:

We would like to have them.

Q. Now, nobody has those checks except an employee of the company, do they? A stranger doesn't get those checks?

A. No, sir, not unless he picks one up somewhere, finds one.

Q. The company issues those checks only to the company's employees?

A. That is right.

Q. And when you are there at the tally house, it is the invariable rule for every man that is going in the mine to hand over his check, isn't it?

A. They put them in a window there. We have a window there. They lay them down in the window.

Q. And just as soon as they put in those checks after you got the men there at the tally house, you can see how many have gone down in the mine?

A. Yes, sir.

Q. And you know, if a work crew is short, what crew needs a man?

A. Yes, sir.

Q. What is a hustling gang?

A. Never heard of it.

Q. You never heard of a hustling gang?

A. No, sir.

Q. Did you ever hear of an extra gang?

A. Yes, sir, I have heard of an extra gang.

Q. What is an extra gang?

A. Well, it is an extra timber crew. We used to have that.

Q. Do you know what an extra board is?

A. No, sir.

Q. Well, as a matter of fact, Mr. Brown, don't you know that men come there, employees of the company come there to the mouth of the mine looking for work before the skips have gone down, and that those men that are there waiting in the event that a miner or a service man doesn't show up are called the extra gang or the hustling gang?

A. No, sir. We haven't any extra men at all.

Q. You have never seen as many as three or four or five men waiting there so if a member of a crew, whether service, or, as you call it, the production crew, didn't show up, he could immediately get a job and be sent down?

A. Not since 1938, I have not.

Q. Not since 1938?

A. No, sir.

Q. Did you ever see it before 1938?

A. I have seen it.

Q. Did you see it at Number 11 or Number 13 or all four of them?

A. Yes, sir, practically the same thing.

Q. And also at Number 8 where you say you worked at Wenonah?

A. I will not say Number 8, because I was drilling or something like that.

Q. You were not a foreman up at Wenonah?

A. No, sir.

Q. You have seen on many occasions the mine foreman or the assistant mine foreman call on those men from the extra gang and tell them to go down and take the place of a man who had not shown up for work, and he would turn in his check and go down on the last trip or next to the last trip?

Mr. Burr:

What time? I am particularly anxious for Mr. Harris to place the time under his view of this case.

Mr. Harris:

I am asking him—

A. It has been some time since it happened.

Q. Tell us when, Mr. Brown. It is—

A. I just couldn't tell you.

Q. How many years ago?

A. I just couldn't say how many years ago.

Q. Well, when did it stop?

A. Oh, I wouldn't say just when it stopped. We haven't had any extra men, I will say, since 1933.

Q. Well, had it been going on all the time while you were working there up until 1933?

A. I couldn't say about that.

Q. When did you first notice that going on?

A. Well, I was foreman at that time.

Q. Where does the head driller or drill helper get the oil to oil their drilling machine?

A. He gets it at the tool house or oil house, rather.

Q. Where is the oil house? Is that underground?

A. Underground, 66 left.

Q. How far is the oil house from the main slope?

A. Fifty feet.

Q. Fifty feet?

A. Something like that.

Q. All right. Then you have a powder house and supply house and oil house?

A. Yes, sir.

Q. All three different houses?

The Court:

Answer out; don't nod.

A. Yes, sir.

Q. When do they get the oil?

A. During the day; at any time they want it.

Q. Any time they want oil there is a man there to issue oil to them?

A. No, sir; they go get it themselves.

Q. Oh, yes. You don't have a man in charge of the oil house?

A. No, sir.

Q. When he gets the oil he walks away with it, doesn't he?

A. Yes, sir.

Q. He is not furnished any ride from the oil house to face, is he?

A. No, sir.

Mr. Harris:

I think that is all, Judge. I was trying to shorten the cross examination by talking to these gentlemen so as to save time.

The Court:
All right.

Mr. Burr:
Any further questions?

The Court:
Judge Smith, any further questions?

Mr. Smith:
No, sir.

Mr. Quinn:
We have none.

Mr. Burr:
Just a few on re-direct, and I think I will be through.

Re-Direct Examination.

(By Mr. Burr):

Q. What do the producing crews get the oil in?
A. Oil cans, gallon cans.
Q. Do you know how much—
A. Gallon oil cans.
Q. How is this oil kept by the company at this oil house?
A. We have an oil drum.
Q. Have what?
A. An oil drum or tank, rather, with a pump in it.
Q. They bring their cans there and pump it out?
A. Yes, sir.
Q. And get it when they want it?
A. Yes, sir.
Q. If they want it in the middle of the shift, they come back and get it?

Mr. Harris:
We object; that is argumentative.

Mr. Burr:
I am asking him if that is a fact.

Q. Is that a fact?
A. Yes, sir.
Q. He asked you about the extra board. You said you hadn't had an extra board there since 1933. Was it during the depression when the men were hunting work?
A. I imagine it was during the depression when they were hunting work.
Q. Were you trying to catch extras yourself then?

Mr. Harris:
We object to that.

Mr. Burr:
No, sir; I want to show the facts.

The Court:
Sustained.

Mr. Quinn:
We object, leading and suggestive.

Mr. Burr:
What is that you are objecting so about?

Mr. Quinn:
Object, leading and suggestive.

Q. I will ask you if it was when the company had the mines down the men were looking for work?
A. Yes, sir, going from one mine to another.
Q. Going from one mine to another?

A. Yes, sir.

Q. And in gangs there was an extra that would catch a day's work?

A. Yes, sir.

Q. Of course, when Mr. Cameron was giving you what has been referred to as the straight line measurements, you understood he was giving the approximate distances?

A. Yes, sir.

Q. As a matter of fact it is longer than that—

A. The haulage way?

Q. —because it is not straight; it goes—

A. Yes, sir.

Q. How far from straight is it now, those headings?

A. Not very far.

Q. I want to get some idea.

A. A few turns.

Q. Have they got any U-curves or turn tables the men have to walk around?

A No, sir. We may have to walk from one side to the other of the man way.

Q. Is it like it was back years past; is it more crooked now or straighter?

A. It is straighter; it has gotten better.

Q. Is it better or worse now than it was then?

Mr. Harris:

We object; it calls for a comparison.

The Court:

I think it calls for a comparison.

Mr. Burr:

I think the witness is entitled to make it.

Mr. Harris:

We object.

The Court:
Ask him whether it has improved, and how.

Q. What I want to know is whether since 1938 the walkways where the men walked going from the unloading station to the places of work, were they straighter then than they are not, or not so straight?

A. They were not so straight then. They are in better shape now.

Q. In better shape now?

A. Yes, sir.

Q. Was it easier to walk then, or walk now?

Mr. Harris:
We object.

A. Easier to do that now.

Q. You have walked them both times?

Mr. Harris:
Same objection.

A. Yes, sir.

Q. I will ask you to state whether or not since your first connection with walking to these working places in these mines you have gone over, conditions have improved or stayed about the same or gotten worse?

Mr. Harris:
We object to that, if Your Honor please.

The Court:
Overruled.

The Witness:
What is that?

Mr. Burr:
Read it to him, Carr.

(Thereupon the reporter read the question last propounded as above recorded.)

A. They have improved.
Q. Now, Mr. Harris asked you as to whether or not you hadn't had some accidents on the skips the men travel in. What was your answer to that question?
A. I said I haven't.
Q. Have not had any?
A. No, sir.
Q. Could you tell the Court how many days you have been running now without any trouble, accidents of any kind, throughout your mine?

Mr. Harris:
I object.

A. I can give it approximately.

Mr. Burr:
If he objects, we are not going into it.

The Court:
Overruled.

A. Something over 530 days.
Q. Without any disabling accident of any kind?
A. Yes, sir.

Mr. Harris:
I think Mr. Burr is leading him along there.

The Court:
Sir?

Mr. Harris:
I think Mr. Burr is leading him along there.

The Court:
I think he is.

Q. All right, sir. If there is any question, state how many disabling accidents there have been in those mines in the last 530 days.
A. Been two.
Q. What were those?

Mr. Harris:
Judge, I don't see—

Mr. Burr:
If he objects, let it alone. I will withdraw the question.

The Court:
The only thing Mr. Harris touched on is on the trip.

Mr. Burr:
On the trip, yes, sir. That is all I want to ask him about, is that.

The Court:
You might confine it to that.

Mr. Burr:
I will confine it to that.

Q. Have you ever had any accidents at all on the mantrips?
A. I don't think I have ever had an accident on the mantrip.

Q. Now, Mr. Harris asked you, and I understood your testimony, you commenced using the wedges and hangers and C-hooks when the mechanical loaders were installed; is that right?

A. We didn't use the C-hooks. We had the straps and bolts.

Q. Before the mechanical loaders came into effect?

A. Yes, sir.

Q. Will you tell me when the mechanical loaders began to be installed over at Wenonah,—Ishkooda, I mean?

A. I think in 1925 was the first one.

Q. When was the whole mine substantially equipped with mechanical loaders?

A. I couldn't say just what year.

Q. What is your best judgment?

A. Must have been '36 or '37.

Q. '26 or '27?

A. I mean '26 or '27.

Q. I knew you didn't mean '36. Those were the articles that you said the head miner or mine foreman, as it used to be before the incentive plan,—not mine foreman,—the section foreman, I believe you called it before then, would have one of his men stop by the tool house and pick up on the way up?

A. Yes, sir.

Q. How did that custom begin out there, do you know?

Mr. Harris:

We object to that, if the Court please,—

Mr. Burr:

I don't—

Mr. Harris:

—how a custom began.

The Court:
I sustain it.

Mr. Burr:
We except.

Q. I will ask you this question then: State whether or not that was done—first, previous to that time were these materials taken up to the stope or not by the company?

Mr. Harris:
We object as leading and suggestive.

Mr. Burr:
It is not leading. I asked him whether or not.

The Court:
He asked him whether or not it was a fact.

Mr. Burr:
Yes, sir.

The Court:
Overrule the objection.

The Witness:
Let's see what that question is again.

Mr. Burr:
Read it to him, please, sir.

(Thereupon the reporter read the question last propounded as above recorded.)

A. All of them were not delivered up to the stope by the company.
Q. I see.

A. Hangers and wedges and such as that were put on the running board, short steel.

Q. What would happen when they were put on the running board?

A. Sometimes the first man going down would go by the running board and pick up hangers and C-hooks and short steel, anything he could get his hands on, and go to the heading with it.

Q. Well, after that—where was it put after it left the running board?

A. In the tool house.

Q. Well, then, did or not the company require the men to get their equipment at the tool house, or did the men get it there voluntarily?

Mr. Harris:

I object to that.

The Court:

Read the question.

(Thereupon the reporter read the question last propounded as above recorded.)

The Court:

Overruled.

A. They were required to get it at the tool house.

Q. When did they first start requiring them to get it at the tool house, about when?

A. To my first knowing, Mr. Burr, they required them to get it at the tool house.

Q. That is how far back, since you have been there?

A. Yes, ever since I have been there.

Mr. Burr:

I think that is all I want to ask him.

Mr. Harris:
There is one question I neglected to ask.

Mr. Burr:
One question.

The Court:
Suppose, Colonel, you ask him now.

Mr. Harris:
I was going to ask him about the pocket in the mine.

(By Mr. Burr):
Q. Where is the pocket in the mine? Is that what you call it?

Mr. Harris:
In Number 11.

Q. What do you mean by the pocket in Number 11?
A. That is our central dumping station. That is where the skip pulls the ore from, from the pocket.
Q. In other words, the ore first is hauled to the pocket underground, and then the skip pulls it out from there?
A. Yes, sir.
Q. Is that pocket at a different place from the underground manloading station?
A. Yes, sir.
Q. Do the skips haul material while they are hauling men? I want to get it clear.
A. No, sir; we do not haul material while we are hauling the men.
Q. I want to make that clear.
A. Not in the skip.
Q. About the powder,—you said there was a powder house. You said the men get powder or dynamite from the powder house on requisitions?

A. Yes, sir.

Q. Who gives that requisition, who asks for it, or who issues it?

A. The head miner gives a requisition to the powder man for the powder.

Q. Is that the only way powder can be obtained, on requisition from the head miner?

A. Yes, sir, from the head miner, unless they get permission from the mine foreman or the assistant.

Q. I see. Now, I didn't exactly understand what your testimony was about that powder being charged against somebody. What did you mean by that? What are the facts about that? I just want to understand that myself. I didn't—

A. Well, each heading is charged with the powder for breaking the ore.

Q. You mean each heading—each productive crew is charged with the powder they use in breaking the ore in that particular heading?

A. Yes, sir.

Q. Is that deducted from the wages or not?

A. No, sir, it is not deducted from the wages.

Q. What is it for, figuring out the incentive?

A. Figuring out the incentive; you might say the powder bonus.

Q. In addition to the incentive wages there is a powder bonus?

A. Yes, sir.

Q. And that is why it is charged against them?

A. Yes, sir.

Q. It is not charged against them and deducted from their wages?

A. No, sir; it is not.

Mr. Burr:

That is what I thought. I was not certain.

I believe that is all. I want to ask him, Judge.

Re-Cross Examination.

(By Mr. Harris):

Q. That didn't clear up to my mind the pocket. Is the pocket in Number 11,—you had a fault and had to go down and come up and start again. Is that what you mean in Number 11?

A. Yes, sir, in Number 11 the pocket is at a fault.

Q. In Number 11 how big is that pocket? Is that the one that will hold 23 train car loads?

A. No, sir; it must be some other one.

Q. How much will it hold?

A. Five car loads.

Q. Regular car loads?

A. Yes, sir.

Q. And how many skip loads will fill a regular car load?

A. 5½ to 6.

Q. 5½ to 6 skip loads dumped in a regular railroad car will fill it?

A. Yes, sir.

Q. And the pocket in Number 11 will hold five railroad cars?

A. Yes, sir.

Q. So it will actually hold 26½ or 27 skip loads?

A. Yes, sir.

Q. How deep is it to the bottom of that pocket?

A. Oh, I would say around 6500 feet.

Q. You don't understand what I mean. I don't mean how far it is from the mouth of the mine to the pocket, but I mean from the top of the pocket to the bottom of the pocket.

A. Oh, I beg pardon. It is, I imagine, about 53 feet, something like that, 50 feet.

Q. I see.

The Court:

How is that supported? How is the top supported?

This is not for the record.

Mr. Burr:

Your Honor can ask it. It is all right with us. Put it in the record.

The Court:

How do you support the roof of that pocket?

The Witness:

It is driven straight down, and of course over here we have steel beams.

The Court:

That is all I want to ask.

Mr. Harris:

One of my associated made another suggestion on something I hadn't touched on.

The Court:

Go ahead.

Q. How many men work in the mine at Number 11? You have what you call a day shift and a night shift, haven't you?

A. Approximately 125 or 130.

Q. On each shift?

A. Yes, sir.

Q. So your tofal is from 250 to 260 men?

A. Yes, sir.

Q. In number 13 how many men—

A. I couldn't say about 13.

Q. How about—well, 14 hasn't been opened up again yet and 12 is not running now either?

A. No, sir.

Q. How long has it been since 12 was running?

Mr. Burr:

Mr. Cameron gave you all these figures.

Mr. Lipscomb:

He gave one.

Mr. Burr:

He gave them both.

Mr. Lipscomb:

13, Mr. Cameron—you gave the figures on the day shift at 13?

Mr. C. B. Cameron:

I gave them both; about the same.

Mr. Burr:

About the same.

Q. Mr. Burr asked you about the walking being easier going into the mine. Just tell the Court not your conclusion about it being easier or harder, but the actual material, physical things that have been done, and when they were done.

A. Well, just general conditions. They are cleaner.

Q. Well, I don't know what you mean is cleaner.

A. The walk,—it is leveler than what it used to be.

Q. They haven't come along and blasted or drilled or leveled the floor of the mine, have they?

A. It is on five percent grade.

Q. That has been that way all the time, hasn't it?

A. No, sir.

Q. Well, when did they change the grade of the mine?

A. Our haulage way is all on five percent grade.

Q. How long has that been on a five percent grade?

A. Oh, two or three years.

Q. And what grade were they on before that?

A. Just whatever the ore was running inside.

Q. How did they change it to get a different grade? What did they change?

A. Run on an angle to get that grade; put it on a five percent grade and let the slope go—the stope go—the haulage way go on that grade.

Q. In other words, they didn't pay any attention to the ore seam, but they ran a course to get a more even grade in the haulage way?

A. Put it on a five percent grade and didn't follow the ore unless we would have a rock fault.

Q. What change did the company—if they followed the ore before and since too, what physical change did they make in it?

A. Well, we had our headings before, just our headings to travel, just general conditions.

Q. Don't you have headings to travel now?

A. Yes, sir.

Q. And you had stopes to work in before and you have stopes to work in now?

A. Yes, sir.

Q. Is that the only change involved,—the only physical change you can call to mind to tell the Court about?

A. Just general conditions are better, air and everything is better.

Q. I am asking particularly about the physical changes. That is all you can tell us about it?

A. Yes, sir.

Mr. Harris:

That is all.

Mr. Burr:
That is all, Mr. Brown.

(Witness excused.)

Mr. Burr:
Does Your Honor want to take another witness, or adjourn now.

The Court:
I think we will adjourn until a quarter to two.

(Whereupon, at 12:00 M., July 14, 1941, a recess was had until 1:45 P. M. of the same day.)

After recess, 1:45 P. M.

The Court:
Who will you have, Mr. Burr?

Mr. Burr:
Mr. J. F. Smith next.

1180 J. F. SMITH, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Burr):
Q. This is Mr. J. F. Smith, is it?
A. Yes, sir.
Q. Mr. Smith, are you working for the Tennessee Company at the present time?
A. No, sir.
Q. When did you quit working for the company?
A. Last day of March of this year.

Q. Last day of March of this year?
A. Yes, sir.
Q. Keep your voice raised a little bit, please, sir. These gentlemen over here all want to hear you too.
A. I will try to. My voice is not very strong.
Q. When you retired from the company, what position did you hold with them?
A. Mine foreman.
Q. What division?
A. Ishkooda division.
Q. And what particular mine?
A. 13.
Q. You knew Mr. Clarence Brown, of course, who testified here this morning?
A. Yes, sir.
Q. Mr. Smith, I want you to give us a sort of history of your business experience.
First, how old are you now?
A. 68 in September.
Q. How old were you when you first began mining?
A. 12 years of age.
Q. 12 years of age? Where did you first begin?
A. Illinois, the State of Illinois.
Q. Whereabouts?
A. The State of Illinois.
Q. The State of Illinois?
A. Yes, sir.
Q. What sort of mines were those?
A. Coal mines.
Q. Slope mines?
A. Shaft mines.
Q. Shaft mines?
A. Yes, sir.
Q. Instead of going down a slope you went down a vertical shaft?
A. Yes, sir.
Q. Like an elevator?

A. Yes, sir.
Q. How long did you work there?
A. Just a few months.
Q. Where did you go from there?
A. Indian Territory.

The Court:
Indian Territory?

The Witness:
Yes, sir.

The Court:
Talk out, Mr. Smith, so we can all hear you. Sit up straight and maybe you can talk louder.

Q. How long—what sort of mines did you work in in Indian Territory?
A. Coal mines.

Mr. Harris:
I didn't hear what he said.

The Witness:
Coal mines.

Mr. Harris:
Coal mines?

The Witness:
Yes, sir.

Q. What sort of work did you do in the mines?

Mr. Harris:
I don't think it is material about the coal mines, Judge.

The Court:
I don't either.

Mr. Harris:
Bring it down to the ore mines.

Q. After you left Oklahoma, where did you go next?
A. Went to the State of Kansas.
Q. About how old were you then?
A. Between 14 and 15.
Q. And were there ore mines or coal mines there?
A. Coal mines.
Q. Were they still underground mines?
A. Yes, sir.
Q. Now, then, after working there where did you go next?
A. For a short time I went back to the Indian Territory, but in a different place.
Q. Still working in mines?
A. Yes, sir.
Q. Still coal mines?
A. Still coal mines.
Q. And after that work in Indian Territory, where did you go then?
A. Came to Alabama.
Q. Came to Alabama?
A. Yes, sir.
Q. Do you remember when that was when you came to Alabama, what year it was?
A. About 1893, as well as I can remember.
Q. And have you been in Alabama ever since that time?
A. Yes, sir.
Q. When you first began to work in Alabama, where did you work?
A. Blue Creek, Summiton,—Blue Creek.
Q. Were they coal mines or ore mines?

A. Coal mines.
Q. Underground coal mines?
A. Yes, sir.
Q. What company did you work for there?
A. The DeBardeleben Coal & Iron Company.
Q. I see. How long did you work at Blue Creek?
A. About 18 months, as well as I remember.
Q. And from there where did you go to?
A. From there to Brookwood.
Q. To Brookwood?
A. Yes, sir.
Q. What county is that in?
A. Tuscaloosa County.
Q. Still underground coal mines?
A. Yes, sir.
Q. I believe Brookwood is a drift mine?
A. A drift mine.
Q. How long did you stay there?
A. I worked there from 1893 to 1899.
Q. Where did you go next in the mining business?
A. Went from there to Cardiff.
Q. Do you remember who operated the Cardiff properties?
A. Yes, sir; the Sloss-Sheffield.
Q. Was that a coal mine or ore mine?
A. Coal mine, drift mine.
Q. And how long did you stay at Cardiff, about?
A. About a year.
Q. And then where did you go to in mining?
A. I was sent by the company from there to America Mines.
Q. Were they coal mines also?
A. Yes, sir.
Q. And after working there—Where was the America Mines?
A. In Walker County; in the edge of Walker County.

Q. At Parrish?
A. Close to Parrish.
Q. How long did you work there?
A. About a year.
Q. Then where did you go?
A. Went from there to Patton.

The Court:
Where?

The Witness:
Patton; about 15 miles from America.

Q. Still working for the same company at Patton?
A. Yes, sir.
Q. What company were you working for there?
A. That was the Virginia and Alabama Company at that time.
Q. Then where did you go?
A. I came back to Jefferson County.
Q. With what company?
A. I believe I worked for the Pratt-Consolidated Company for a while.
Q. And where from there?
A. I went from there back to Walker County and worked for the Annie May Coal Company.
Q. And after that where?
A. There are so many places, I might get mixed up.
Q. You pretty well covered Alabama?

Mr. Harris:
Judge, I don't think this is important. He is still on coal.

The Court:
I don't see the need of going into the coal mines.

Mr. Burr:
All right, sir.

The Court:
I think if the gentleman will give his mining experience—

Mr. Burr:
I would like to have it in because I expect to raise the question later to show his experience with coal mining.

Mr. Harris:
What I think is important is ore mining.

Mr. Burr:
Before we get through I think we will find the coal mining is as important as the ore mining. There are so many more in it.

The Court:
I thought we were going to the ore mines.

Mr. Burr:
I want to show his experience in mining.

The Court:
Well, let's don't take up any more time.

Q. Where did you go to from there?
A. Where did I leave off?
Q. I believe you said last you were at the Annie May Mine.
A. I went from there to Blossburg.
Q. And from Blossburg, where?
A. From Blossburg to Number 4,—Number 4, T. C. I. coal mine.
Q. That is near Wylam, I believe?

A. Yes, sir.

Q. Where next after that?

A. To Lewisburg.

Q. Is that another coal mine?

A. Yes, sir.

Q. From there to where?

A. From there to Aldrich mine.

Q. From there where?

A. To Red Mountain in the ore mines.

Q. All right, sir. Now, whereabouts on Red Mountain did you come to your first ore mining?

A. Number 11.

Q. That is for the Tennessee Company?

A. Yes, sir.

Q. What date was that, Mr. Smith?

A. That was March 31, 1916.

Q. Now, without going into details in your coal mining,—I am first asking that for your experience,—did you work all the way from a boy up to superintendent of some of these mines?

A. Yes, sir.

Q. I just want—And covered all the grades in between there?

A. Yes, sir.

Q. Now, what date did you say you reached Number 11 Mine?

A. March 31, 1916.

Q. 1916. Did you stay there or go somewhere else? How long did you work in that mine or on that division, —it doesn't make any difference?

A. I have worked on that division ever since.

Q. As I understand, you have worked in the Ishkooda Division since that time?

A. Yes, sir.

Q. In what different capacities have you worked on that division?

A. I didn't get the question.

Q. In what positions on that division have you worked?

A. Everything from section foreman to mine foreman.

Q. Did you leave the coal mines and go into the ore mines as a foreman?

A. As a section foreman.

Q. As a section foreman?

A. Yes, sir.

Q. And went from there to mine foreman?

A. No, sir. I went from there to head blaster, something like an assistant.

Q. Name some others you have worked at.

A. That is about the jobs I have worked at. I have done everything in the mines.

Q. How long had you been mine foreman when you retired?

A. I was made mine foreman in 1921,—in '20.

Q. In what mines have you worked?

A. First in Number 11, and Number 13, and Number 11 again, and Number 13.

Q. When you retired you were mine foreman in Number 13?

A. Number 13.

Q. And about how long had you been mine foreman in Number 13 on that occasion?

A. Since '34, I believe.

Q. What?

A. Since '34.

Q. Since '34?

A. Yes, sir.

Q. Were you just backwards and forwards according to what mines were operating there; is that the way you worked it out?

A. Yes, sir.

Q. During that time some mines were operating and some were not?

A. Yes, sir.

Q. First one and then another?

A. Yes, sir.

Q. Was the same general system in use in all those mines so far as the time and transportation and method of work and things of that sort?

A. Yes, sir, about the same.

Q. About the same?

A. Yes, sir.

Q. In every one you worked at?

A. Yes, sir.

Q. Suppose we take Number 13? That was the last one you worked at. I wish you would give us just rapidly, Mr. Smith, without going into too much detail, the course of a miner from the time he left the bath house on down. Could you tell us what he did getting to his work and how he got there and so forth?

A. Yes, sir.

Q. All right, sir.

A. Coming to Number 13, the bath house is about 200 yards from the tally house. He would change clothes at the bath house and went from there to the tally house and deposited his brass check at the tally house and got ready to ride down in the skip.

Q. All right, sir. Did he get any carbide before he rode down?

A. Yes, sir, that is the method of lighting.

Q. The lighting system?

A. Yes, sir.

Q. Where did he get his carbide?

A. At the tally house.

Q. After he had deposited his check, what did he do?

A. Well, after he had his carbide, he stepped outside and waited for the skip.

Q. Do you remember what time the skip left there, the time the skip went down prior to May 1, 1941,—up until the time you left there?

A. Yes, sir.

Q. What was the skip schedule in that mine?

A. The skip was pulled out of the side track when the whistle blew at 6:00 o'clock, and we made the run,—usually went to heading 26.

Q. Was that run a test run?

A. Yes, sir.

Q. What you call a safety run?

A. Yes, sir.

Q. All right.

A. Then the skip was pulled into the tipple and backed back to the loading station where the men loaded.

Q. About how many men would get on the skip at that time?

A. I would say from 27 to 30.

Q. Is that the same skip they use in hauling the trailer with material on it?

A. Yes, sir.

Q. And that you used to haul the ore out of the mine?

A. Yes, sir.

Q. When the men rode it, did you carry any material on the skip?

A. No, sir.

Q. Was there any particular skip the men were to take?

A. No, sir, none whatever.

Q. They rode down to what point in the mine?

A. At the present time they rode down to heading 30.

Q. At the time you left there?

A. To heading 30.

Q. Do you recall—

A. Let me make a correction,—31.

Q. 31?

A. Yes, sir.

Q. Do you remember about how far 31 is below the surface, your best judgment?

A. I would say between 2500 and 3000 feet.

Q. All right, sir. Getting off at the loading station, what did this miner do? I am talking about the producer miner now, the one that worked at the face.

A. He would proceed from there to his working place after he got off the skip.

Q. When was your shooting time?

A. 3:10,—ten minutes after three.

Q. Mr. Smith, how was the time of the men, the underground employees, computed and paid for during the time you were there?

A. Well, when I left there—do you mean how was the time handled?

Q. No, I don't mean the mechanics of it. I mean whether it was on a face to face basis or portal to portal basis.

A. It was on a face to face basis.

Q. What time did the men start in the morning?

A. 6:45.

Q. What time did it end in the afternoon?

A. Ten minutes after three.

Q. When you left there in March, how many hours a day did the men work and get paid for?

A. Eight hours.

Q. Do you recall when the eight-hour day went into effect in those mines?

A. No, sir,—not exactly.

Q. Could you tell us about when it was, give us some idea about when it was?

A. I would be afraid to say.

Q. Previous to the 8-hour day, what was it?

A. Ten hours.

Q. Ten hours?

A. Yes, sir.

Q. When you were on that ten-hour basis did they go down the same time in the morning?

A. No, sir. We started at 6:30.

Q. When did the work day end under that plan?

A. 4:30.

Q. 4:30?

A. But they started shooting at 4:20.

Q. Started shooting at 4:20?

A. Yes, sir.

Q. Since the 8-hour day has been in force, I believe you say they started shooting at 3:10?

A. Yes, sir.

Q. How about—during the time you were working ten hours, did or not the men have 30 minutes for lunch during the 10-hour period?

A. Well, I don't know, because the mine never stopped.

Q. Didn't stop for lunch?

A. No, sir.

Q. Under the 8-hour system they do stop?

A. Yes, sir.

Q. How is that stopping indicated?

A. Indicated by the generator stopping at 11 o'clock.

Q. Blinking?

A. Yes, sir.

Q. What time does the generator start in the morning?

A. 6:45.

Q. And what time does it shut down in the afternoon?

A. 3:10.

Q. And it stopped at 11, you say, for lunch?

A. Yes, sir.

Q. Now, Mr. Smith, during that period, we will say during the 8-hour period to fix the time, how were the —was there a supply house on the outside of the mine for tools and materials and equipment and things of that sort?

A. Yes, sir.

Q. All right, sir. Now, how, and on whose requisition, if a requisition was given, was the material gotten into the mine for the use of the underground miners?

A. The mine foreman issued a requisition for what he wanted and sent it to the supply house or warehouse and it was delivered by truck to the opening of the mine.

Q. Who delivered it?

A. By truck by the surface crew.

Q. By the surface crew?

A. Yes, sir.

Q. After it was delivered to the mouth of the mine, what was done with it then?

A. It was picked up by the slope track crew and delivered in the mine. If it was drill steel, it was delivered on the running board of the different headings. If it was material that had to be locked up, it was delivered at the tool house at the 30th heading.

Q. Who carried the keys of that tool house?

A. Whoever was pipe man.

Q. That was his job?

A. Yes, sir, part of his job.

Q. What time in the morning was that tool box opened?

A. He would get the keys—sometimes he would ride the last trip, and he was given the keys when he got down there, and he had orders not to open the tool house until 6:45.

Q. Did he obey the orders as far as you know?

A. Yes, sir.

Q. When did you say he got the keys?

A. The keys were locked up in the mine foreman's office, and he was given those keys when he called for them.

Q. Was that after he had come from the surface?

A. Yes, sir.

Q. Where was the mine foreman's office?

A. About 80 or 85 feet from the slope.

Q. After he got the keys there at 6:45 he opened his tool box?

A. Yes, sir.

Q. What tools were carried in that particular tool box?

A. Well, there were small drill valves, other small materials, pick handles, hammer handles, pipe fittings and other things needed in the mine, hangers and wedges and C-hooks.

Q. C-hooks?

A. Yes, sir.

Q. Were the drill tripods and big drills carried there?

A. No, sir.

Q. How did they get into the stopes, the working places?

A. They were hauled in by service crews, and the drills and tripods and hose pipe and heavy tools were left in there.

Q. If that needed repairing or swapping out, how was that handled, the heavy material?

A. The head miner kept spare parts, and it was a matter of a few minutes to put a tripod leg on and it was quicker than to send it out to be repaired, and they did that themselves.

Q. Where did they do that?

A. At the working place.

Q. Up in the stope?

A. Yes, sir.

Q. When did they do that, before 8:45, or after 8:45, —before 6:45 or after 6:45?

A. After 6:45.

Q. Was it after or before 3:10 in the afternoon?

A. It would be before 3:10 in the afternoon.

Q. Now, to get back to the smaller tools you have told us about that were kept in this tool box, how were those tools gotten up to the working places?

A. Gotten up—

Q. Tell me first, any changes that were made. Give me the way they were gotten up when you first went there, and then tell me about those changes.

A. The tools that had to be locked up were gotten up there by the pipe man and his helpers. They were service men.

Q. Was any change ever made in that?

A. Yes, sir.

Q. In your place the men didn't come by and get the tools from the box on the way to work?

A. No, sir, not until after work hours.

Q. Not until after work hours?

A. No, sir.

Q. What do you mean by after work hours?

A. After 6:45.

Q. That is the way it was handled in this mine?

A. Yes, sir.

Q. Was that true while you were there?

A. Yes, sir.

Q. How was the powder handled in your mine?

A. We had a regular powder man, and when a heading wanted powder, there was a requisition signed by the head miner and given to whoever he designated to carry the powder from the powder house up to the working place.

Q. Was that powder issued by the powder man?

A. Yes, sir,

Q. When was that done?

A. Usually from one to one thirty, or, I will say, a quarter of two.

Q. Is the powder the same thing as dynamite?

A. Yes, sir.

Q. That is what you are talking about?

A. Yes, sir, all one.

Q. In that mine you worked in there while you had charge of it as mine foreman I believe you said the shooting time was 3:10.

A. Yes, sir.

Q. Was that the universal shooting time in all mines—

A. Yes, sir.

Q. —if you can recall it—

A. Yes, sir.

Q. —since they went on the 8-hour day?

A. Yes, sir.

Q. All right. Did the muckers—I believe you call them now the section helpers?

A. Yes, sir.

Q. Did they or not have to leave the working place before the shooting?

A. Yes, sir, unless they were called on to help in the shooting.

Q. Unless the head miner kept some of them back?

A. Yes, sir.

Q. Did everybody have to leave the working place before the shooting actually occurred?

A. I didn't just understand the question.

Q. Before the explosion?

A. Yes, sir.

Q. You say that occurred at 3:10?

A. Yes, sir.

Q. Did they light the fuses and everybody would have to leave; is that the way it was run?

A. Yes, sir.

Q. And you say the head miner and drill man and his assistant looked after the shooting?

A. Yes, sir.

Q. And on occasion they could call on those other fellows to help them if they needed them?

A. Yes, sir.

Q. Did those muckers leave before the fuse was lit that helped shoot?

A. Sometimes they would help them light.

Q. Those that didn't help with the shooting, when did they leave?

A. When the last car was loaded.

Q. What was the usual time?

A. The men usually ran the drag or what we call the mechanical loader as long as they could, until the lights were cut off. When the lights were cut off, they had to stop then and would go to the slope.

Q. When they got to the slope, what was the first skip out?

A. At what time?

Q. At what time, yes, sir.

A. Usually between 3:15 and 3:18.

Q. Who determined who would ride that skip?

A. There were benches for them to sit on, and they sat in line. The first men that were there were the first men to ride out.

Q. Now, does that, in a general way, detail how the thing was run?

A. Yes, sir.

Q. And does what you have stated applied to 13 applied to the other mines over there in a general way?

A. Yes, sir, very much so.

Q. I will ask you to state whether or not in any of these mines you have worked in the men were ever paid for any portion of the traveling time, the time they spent in going to and from their working places?

Mr. Harris:

Same objection.

The Court:

Overruled.

A. No, sir.

Q. At this mine you worked in or any other mine you worked in, did the men ever make any complaint or any request they should be paid for traveling time as far as you know?

Mr. Harris:
We object to that. He was not the man to whom the complaint would be made.

The Court:
You asked if he knows?

Mr. Burr:
I said as far as he knows.

The Court:
Overruled.

A. No, sir.
Q. Was it the universal custom—

Mr. Harris:
May it please the Court, that is a conclusion, about the universal custom.

The Court:
I sustain the objection.

Mr. Burr:
All right; that is all.

The Court:
Is that all?

Mr. Burr:
Just a minute, Your Honor. I think I am through. I believe that is all, Judge.

Cross Examination.

(By Mr. Harris):

Q. Mr. Smith, Mr. Burr used the word, "retired" from the Tennessee Company. Are you on pension?

A. No, sir.

Q. What mines did you work at, what ore mines of the Tennessee Company did you work at?

A. I worked at 11, Number 12, Number 13 and 14.

Q. Well, that is all, just the Ishkooda Division, isn't it?

A. Yes, sir.

Q. You didn't work in any other division?

A. No, sir.

Q. And while you were working in the Ishkooda Division you didn't have any time to go running around over the Muscoda and Wenonah Divisions, did you?

A. I didn't do it.

Q. You didn't do it and you don't know what went on in the Muscoda and Wenonah Division?

A. No, sir, I didn't know what was customary at the rest of them.

Q. You didn't know anything about it?

A. No, sir.

Q. You say you retired and left the Tennessee Company what day this year?

A. March 31st.

Q. March 31st; what have you been doing since then?

A. Working around the house; fishing.

Q. How many times have you been into Birmingham to talk over the case with Mr. Burr?

A. I have never been in Birmingham to talk the case over with Mr. Burr.

Q. Who have you talked with about the case?

A. I talked to Mr. Burr.

Q. Where did you talk to him?

Mr. Burr:

I went out to see him.

A. Out at Muscoda.

Q. Out at Muscoda?

A. Yes, sir.

Q. How many times have you talked with him about the case?

A. Once.

Q. And you have sat here and heard the testimony since the case started?

A. I did.

Q. Now, during the time you were working with the Tennessee Company, were you a member of the International Union of Mine, Mill & Smelter Workers?

A. No, sir.

Q. Did you ever at any time take any part in organizing these unions?

A. No, sir.

Q. Were you a member of the American Federation of Labor union?

A. No, sir.

Q. Now, was it at Ishkooda where the mountain was skinned and the trees were cut down? Was that out at Ishkooda?

A. Yes, sir.

Q. Was that done while you were a mine foreman out there?

A. I was.

Q. What year was that done?

A. I don't remember exactly.

Q. Have you any idea?

A. In '34 or '5, along there somewhere.

Q. Wasn't it along in 1936?

A. I don't know just what year it was.

Q. Don't know what year it was?

A. I wouldn't be positive about that.

Q. How many men were working in Number 13 when you quit work there in March?

A. I had about 120 on my shift.

Q. 120 on a shift, and two shifts a day?

A. Two shifts of work.

Q. That was all that was in the mine, two shifts?

A. There were more men working on the other shift than mine.

Q. Did you have a night shift?

A. Alternately.

Q. One week be on day shift and the next on night shift?

A. Yes, sir.

Q. How many men did they have on the other shift?

A. It varied. Sometimes they would put on an extra crew of men to catch up with the work. Sometimes they had extra work, some timber or track work to do, and they would put on another crew.

Q. And they worked under the other mine foreman?

A. Yes, sir; he was the senior foreman.

Q. Who was that foreman?

A. W. O. Brown.

Q. That wasn't the Brown who was here on the stand this morning?

A. No, sir.

Q. Still another Brown?

A. Yes, sir.

Q. Were those two Browns any kin?

A. They were.

Q. What?

A. Brothers.

Q. Brothers?

A. Yes, sir.

Q. How long was Brown foreman out there, all the time you were there?

A. Yes, sir.

Q. Would you say one extra crew was the difference between his shift and yours, or was there more than one?

A. Sometimes maybe more. Sometimes they would put on an extra timber crew and extra track crew.

Q. You spoke of development work. What did you mean by development work, Mr. Smith?

A. That would be pretty hard to explain.

Q. Well, do the best you can.

A. Take in Number 13, for instance, 26 left, we had to abandon the haulage way at 26 and go way around and get the ore from a different direction, and it required several hundred feet of track to be laid and timbers to be set, such as that.

Q. Why did you have to abandon that haulage way; what is the reason?

A. Well, that was evidently where the main part of the work was going to be, and they brought it around in that way.

Q. I don't follow you. You mean the development crew was running a course, a heading, or laying track to the place where the main part of the work would be thereafter? Is that what you mean?

A. No, sir. To be more explicit, they had worked everything out but two stopes and there was very bad top in the roadway and the company decided to abandon that part of it and go around and bring it out from another direction, from Number 26.

Q. What do you mean by very bad top? What does that mean in mining language in this district?

A. Well, it meant top that had to be timbered later on, timbers began to rot on and so on.

Q. So, all the work of getting away from that bad top and going around—how many feet did that embrace?

A. I wouldn't know. Possibly a thousand feet.

Q. Possibly a thousand feet?

A. Approximately.

Q. And all that was development work?

A. We call it development work. We had to lay new track. That is part of the development work, I figure.

Q. Who works on the development work?

A. There is no particular one that works on the development work. There is a crew that does steel timbering in places like I have explained.

Q. Yes. Now, did the—now, in doing this development work does that involve taking the ore out of the way?

A. No, sir, not that I spoke of.

Q. The kind of development work you are talking about didn't embrace running the slope or a heading?

A. No, sir, did not.

Q. Did the head drill man and his drill helpers and his muckers do development work, or did a service crew do development work?

A. No, sir; that was done by a regular crew, operating crew.

Q. Well, were they service men?

A. No, sir.

Q. Were they company men?

A. No, sir.

Q. Were they called company men?

A. No, sir.

Q. Did they have a special name for them?

A. The development crew is about all—

Q. So, in the mine you worked at you had three types of men,—four types; a drill crew, a service crew and a development crew down underground—

A. Well, it was for years we didn't have any development crew at all because there wasn't any development work being done.

Q. Well, when did the development work start?

A. I couldn't say; possibly—

Q. Can you give us any idea?

A. It went on several different times, and I couldn't tell you what date we started.

Q. Where did they get the development crews? Did they have to hire special people to form the development crew?

A. No, sir.

Q. Who formed the development crew; the mine foreman or mine superintendent?

A. The mine superintendent.

Q. Who was your mine superintendent when you were out there?

A. Mr. Cameron.

Q. Did he come and hand you a list and say, "These men will be a development crew"?

A. Not in that particular way. I would go to the office and he would go over and pick out—there were men that have done that kind of work and made a specialty of it. When they were not working in the development work they would be working out in the headings, and we would make a crew up from these men.

Q. What were they doing out in the heading?

A. The head man would be a head miner.

Q. Head miner?

A. The other men would be section helpers and such as that.

Q. When you took a head miner off his crew and put him on a development crew, did you change the way he was paid?

A. No, sir.

Q. Kept on being paid the same way?

A. Yes, sir.

Q. Did that go on in 1938 and '39 and '40?

A. We didn't have any development work at that time.

Q. When was the last time you did have a development crew?

A. Several years ago.

Q. How many?

A. Several years ago; I don't know just how long.

Q. Can't remember?

A. No, sir.

Q. When was the development work you were talking about where the top got bad? When was it you did that particular work?

A. That is a different kind of work.

Q. I am not asking about the kind. I am asking about the time, when you did it?

A. That was about two years ago, two or three years ago.

Q. That is where you ran a thousand feet or more?

A. That is where we laid the track.

Q. I understand that kind of development work—what is this other kind of development work you have brought up?

A. As you advance in the ore.

Q. As you advance in the ore that requires development work?

A. That is in the slope and manway.

Q. The company pays for that development work?

A. Yes, sir.

Q. Who does that?

A. I told you we have special men to do that, men that have been working at development work for a number of years. That is the kind of men we put at that work when we had to do it.

Q. Now, then, when those men finished the work, the development work, what did they do afterwards?

A. They were put in these headings—

Q. And whom—

A. —working in the same capacity they were working in the development work at the same rates.

Q. In other words, they would go back to whatever their old jobs were?

A. Yes, sir. It might not be in the same heading. It might be in another heading, but the rates were just the same. The rate wasn't changed.

Q. I didn't ask you about the rate they got. I asked you if they went back to the old jobs, not that they went back to the old rates. Did they go back to the old jobs they had before?

A. Yes, sir.

Q. Out at 13 you never did maintain a tool house on the top?

A. No, sir.

Q. And you didn't maintain a blacksmith shop on top?

A. Yes, sir, they had a blacksmith shop.

Q. He didn't have anything to do with the tools used down in the mine, did he?

A. He repaired some of them.

Q. What tools did the blacksmith out at Number 13 repair?

A. Sharpened the steel, repaired the skips—

Q. What about C-hooks.

A. He didn't have anything to do with C-hooks.

Q. What about wedges?

A. Or wedges either.

Q. Or hangers?

A. Nor with hangers.

Q. He didn't have anything to do with making—

A. I beg your pardon. Just a minute. Sometimes we sent bent hangers back to the outside and he straightened them and sent them back to the mine.

Q. Wedges were always being lost?

A. Yes, sir.

Q. Didn't the blacksmith make wedges?

A. No, sir.

Q. Didn't make them or sharpen them or have anything to do with them at 13?

A. No, sir.

Q. Now, practically all the work that the blacksmith did was on stuff that was used by men working down in the mine, wasn't it?

A. Not altogether.

Q. Well, the greater portion of his work was on equipment and materials that were used down in the mine, wasn't it?

A. He had to take care of the work on the outside too for the mechanical department.

Q. What outside work did he take care of?

A. Anything that needed to be done. He was under the supervision of the master mechanic.

Q. Now, the supplies used at 13,—did you all have any supply house on top?

A. Yes, sir.

Q. And did you have a powder house on top?

A. Yes, sir.

Q. Did you have an oil place on top?

A. Oil was kept—Yes, we had an oil house. It was kept in the supply house.

Q. On top?

A. Yes, sir.

Q. Now, how did the men get their oil for their drill machines?

A. Well, we had the oil sent into the mines in 55 gallon drums and unloaded in tanks with pumps in them in the oil house adjacent to the tool house at 30 heading.

Then, when the men came out—we supplied the men with gallon cans. They had two of them. Each heading had two. As they came out to ride the skip car out of the mine they would leave their cans at a certain point and the other shift would come on and get those cans and fill them and carry them on into the heading for their use.

Q. So, each shift as they got off the—left the hoodlum, would get their oil and carry it from the oil place to the heading?

A. That is right.

Q. Now, at 13 when a man wanted dynamite or stick powder, did he get that, as he got off the man skip or came out of the hoodlum? Did he or not get his stick powder and take that on up into the heading with him?

A. No, sir.

Q. Was there any time he could do that while you were mine foreman out there?

A. No, sir.

Q. Now, this carbide that the men used and brought into the mines with them, without that carbide they couldn't have worked in the mines at all, could they?

A. Not unless they were equipped with other kind of lighting system.

Q. But that was the only lighting system there was there so that every man as he went to work in the mine had already gotten his individual lighting system complete when he started on the man skip?

A. Yes, sir.

Q. And the company didn't have them stop and pay for it with cash when they did get it, but they charged it to them, didn't they?

A. Right.

Q. And every employee of the company had him one of these brass checks with his number on it?

A. Yes, sir.

Q. And he would come up and say, "Give me a can of carbide," or did he ask for it by the can? How did they call for it?

A. A can of carbide.

Q. And called out his number?

A. Yes, sir.

Q. Was there just one man back there handing it out and writing down the numbers, or two?

A. One man.

Q. Did he have to write the man's name or his check number?

A. His check number.

Q. Did you supply that man in the carbide place with a list of all the numbers of the men working in the mine so all he had to do was to put a check mark after it, or did he have to write the number there and a check mark to show a particular man had gotten carbide at a particular time?

A. I didn't quite exactly understand that question, Mr. Harris.

Q. Suppose 38 came up and said, "Give me a can of carbide." You handed it out?

A. Yes, sir.

Q. When he handed it out, what did he do?

A. He had a regular carbide book and put his number down in the book.

Q. Did that carbide book have every man in the mine listed?

A. Yes, sir.

Q. Numerically?

A. Yes, sir.

Q. Did he just turn the pages of the book—

A. He didn't have to turn the pages. He had his numbers written out from 58 on up as far as the numbers went and had them all on one page. If my number was 6125, he looked at the 61 column and put 25 by it.

Q. That is what I want.

A. Yes.

Q. One of those books would last how long?

A. I don't know. They had to send them in to the office twice a month.

Q. When you send them—they were just duplicate books? The next book would be arranged in the same fashion?

A. He arranged the book himself. He arranged the numbers himself.

Q. Who was the man that stayed at that place and handed out the carbide?

A. The time taker.

Q. Who?

A. The time taker.

Q. Wasn't it the mine foreman?

A. No, sir.

Q. Wasn't it customary for the mine foreman to be the one who handed out the carbide?

A. No, sir.

Q. The time taker did it?

A. The time taker.

Q. How far was the carbide place from the tally house?

A. In the tally house.

Q. In the tally house?

A. Yes, sir.

Q. Was that the same man they handed the brass checks to when they reported?

A. Not on my shift.

Q. Did you have another man they handed the brass checks to?

A. Not at my place. I took them myself.

Q. At your place did you have a hustling gang or extra gang out there waiting to work if a man didn't show up?

A. At times I have had two or three extra men.

Q. As a matter of fact, there were times when there were men waiting there every morning for a chance to get a regular job when somebody didn't show up?

A. At times there were, and at times we didn't have enough men.

Q. When you needed an extra man and there were extra men waiting there, you would call him over and say,

"Put in your check," and he would start down, and he didn't have to go see the superintendent or an employment agent—

A. This man was already an employee of the Tennessee Company. I didn't have the right to put a new man to work. This man had already been written up.

Q. That is right; he was an employee in the sense he had been already investigated and written up and given a brass check?

A. Yes, sir.

Q. But he couldn't go to work until you motioned him over and he threw in that brass check?

A. No, sir.

The Court:

Are you through?

Mr. Harris:

I am trying to shorten it, Judge.

Q. Were the miners at the mine where you were working ever paid on a tonnage basis?

A. No, sir.

Q. While you were there?

A. No, sir.

Q. Did they ever have a task basis while you were there where they were supposed to get out so many cars on a shift?

A. They were.

Q. How many cars were they supposed to get out on a shift?

A. I think it was ten tons.

Q. Ten tons or ten cars?

A. Ten tons a man.

Q. Ten tons per man?

A. Ten tons per man.

Q. And if they got out that amount did they have to stay there until quitting time, or could they leave early?

A. They could leave any time they wanted to after they got that amount of ore loaded.

Q. What years was that system in operation out there?

A. I don't know how long but it was several years after I started with the company.

Q. Can you tell us what years they were?

A. I would say from 1916 to 1924 or '5.

Q. And did that stop when they got the mechanical loaders installed? Was that when the tonnage basis was dropped?

A. Yes, sir.

Mr. Harris:

I think that is all I care to ask.

Mr. Burr:

Anything else, Judge Smith?

Mr. Smith:

No.

Re-Direct Examination.

(By Mr. Burr):

Q. Mr. Smith, these extra men that were there at the entrance to the mine, was that a matter of—first, I will ask you what years did that happen in principally, do you recall?

A. No, sir.

Q. Do you know what years we refer to as the depression years?

A. Well, along about 29 to 31.

Q. Was that largely during the depression years or not?

A. Well, I have had a few men, a very few men, up until the time I quit.

Q. Well, was it frequent or infrequent you had these—

A. Infrequent.

Q. Would they be men you knew?

A. Beg pardon?

Q. Would they be men you knew?

A. Yes, sir.

Q. And knew what work they could do?

A. Yes, sir.

Q. Or had been doing?

A. Yes, sir.

Q. When you didn't—as a usual proposition, how did you supply vacancies in 13?. He didn't ask you about that.

A. Well, if there was a drill runner absent from a working place and I didn't have an extra drill runner or a man that could drill—I will not say an extra drill runner, because didn't have any extra drill runners, but a man that could run a drill, I would try to supply him with a man from another heading if I could spare him and supply him with a man from the service crew.

Q. How did you arrange that? Did you go down in the mine?

A. I usually did that by telephone before I left the tally house if I could.

Q. Would that be done before or after the men went in the mine?

A. It would be done before the last trip ran.

Q. What trip did you do it on?

A. Usually the last trip.

Q. Usually the last trip?

A. Yes, sir, usually the last trip.

Mr. Burr:

That is all for Mr. Smith.

(Witness excused.)

The Court:
We will take about a ten-minute recess.

(Thereupon proceedings were in recess from 2:45 P. M. to 3:00 P. M., at which time proceedings were resumed as follows:)

The Court:
Next witness.

Mr. Burr:
If the Court pleases, I had intended, as I stated this morning, after examining a couple of the mine foremen here, to go over to Wenonah, and Mr. George Neal, who is superintendent of that division, was here this morning. He had to go home sick and the doctor has got him in bed. He has had a little heart attack.
I am going to try to proceed in this way—

The Court:
Can't you skip down lower?

Mr. Burr:
No, sir. Mr. Carter is also sick.
I will put on another mine foreman at Wenonah. I will put him on and then let Sloss intervene and let them put on their testimony while Mr. Carter and Mr. Neal are getting well.

The Court:
All right.

Mr. Burr:
Mr. Scott.

The Court:
What are his initials?

Mr. Burr:
It is Pete, and I will have to see what his initials are.
What are your initials, Mr. Scott?

Mr. Scott:
E. C.

1220 E. C. SCOTT, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. Burr):
Q. Mr. Scott, are you employed by the Tennessee Company at the present time?
A. Yes, sir.
Q. And what position do you hold with them?
A. Mine foreman.
Q. And what mine—what division first, are you employed in?
A. Wenonah Division.
Q. In what mine are you one of the mine foremen?
A. Number 9.

The Court:
Number what?

The Witness:
Number 9.

Q. Who is your superintendent of that division?
A. G. B. Neal, Jr.
Q. Has he been superintendent ever since you came there or not?
A. No, sir. I was working there before he came.

Q. Do you recall about when Mr. Neal came there as superintendent?

A. I think he came somewhere around about 1922.

Q. What time did you first go to the Wenonah Division?

A. 1913.

Q. 1913?

A. Yes, sir.

Q. Previous to that time, and I will run over it briefly and hastily, had you any other mining experience before you went to—

A. No, sir.

Q. You first started at Wenonah?

A. Yes, sir.

Q. How old were you then?

A. Between 19 and 20 years old.

Q. Between 19 and 20 years old?

A. Yes, sir.

Q. Have you been at Wenonah since that time?

A. No, sir, I have worked at other places.

Q. How long did you stay there the first time?

A. I think four or five months.

Q. What mine did you work in then?

A. I went to Acmar.

Q. I mean in what mine at Wenonah did you work?

A. Number 9.

Q. Number 9?

A. Yes, sir.

Q. What did you do?

A. I run a sinking hoist engine.

Q. Is that underground?

A. Underground.

Q. Is that a sinking auxiliary hoist?

A. Yes, sir.

Q. What does it handle?

A. It handles ore from narrow places and places off the main slope.

Q. Is that all you did at Wenonah at Number 9 the first time you were there?

A. Yes, sir.

Q. Then you worked at Acmar?

A. Yes, sir.

Q. That is a coal mine over in St. Clair county?

A. Yes, sir.

Q. How long did you work there?

A. About four or five months.

Q. Work inside or outside?

A. Inside.

Q. Then where did you go?

A. Went back to Wenonah.

Q. How long did you stay there at that time?

A. I don't recall exactly, but I was pumping on the night shift. I must have stayed there five or six months.

Q. During all that period were you a pumper and was that inside or outside?

A. Inside.

Q. What were the duties, just generally, of a pumper?

A. That was to keep the water out of the mine.

Q. I see. Was that the same mine, Number nine?

A. Yes, sir.

Q. After that did you leave there again?

A. Yes, sir; I left and was away something like a month and came back and went to work at Number 7 mine.

Q. Is that in the same division?

A. Yes, sir.

Q. What kind of work did you do in Number 7 mine?

A. I had an extra timber crew over there. That was a crew in addition to the regular mine crew, doing the square timbering and other timbering the other crew didn't have a chance to do.

Q. Were you foreman of that crew or not?

A. Yes, sir.

Q. How long did you work as the foreman of that timber crew in this mine?

A. About—close to a year, I think.

Q. What was your next employment in the mine?

A. Skip tender.

Q. Skip tender?

A. Yes, sir.

Q. In the same mine?

A. Yes, sir.

Q. What were the duties of the skip tender? What did you have to do when you were skip tender?

A. I gave signals to the engineer in hoisting the ore and attended to dumping the ore.

Q. Did you have charge of the mantrip?

A. Yes, sir, I gave the signals on the mantrip.

Q. After that experience what did you do next in the way of mining?

A. Well, I worked at Number 7 on that skip tending job and then I went to running a sinking hoist engine again in Number 7, over in 6½ slope, and transferred from there to Number 6, Muscoda, and worked with the carpenters while they were concreting Number 6 slope.

Q. Was that underground?

A. Yes, sir.

Q. The carpenters were what you call a service crew?

A. Yes, sir. They were concreting the gangway in Number 6.

Q. How long did you work there?

A. About two months.

Q. Then where did you go?

A. I transferred back to Wenonah.

Q. As what?

A. Sinking hoist engineer.

Q. Sinking hoist engineer?

A. Yes, sir.

Q. After that what did you do?

A. I worked at Number 7 up until about May, 1917.

Q. What different capacities did you work in during that time?

A. Pipe man and hanger drill hole runner, and drill runner.

Q. In 1917 where did you go?

A. I went to Parrish with the Railway Fuel Company.

Q. Is that a coal mine?

A. Yes, sir.

Q. Underground mine?

A. Yes, sir.

Q. What kind of work did you do over there?

A. I drove the slope.

Q. How long did you stay over there?

A. Seven months.

Q. Then where did you go?

A. I went to Gayoso. That was a drift mine between Parish and Oakman.

Q. How long did you stay at Gayoso?

A. About three weeks. I was pulling pillars in a coal mine.

Q. That was what you call robbing pillars?

A. Yes, sir.

Q. After you left that coal mine where did you go?

A. I went to number 3 Woodward.

Q. Is that an ore mine?

A. Yes, sir.

Q. How long did you work at Number 3 Woodward?

A. About a month.

Q. What job did you have over there?

A. I was drilling for a contractor that was driving a sump.

Q. Driving what?

A. Driving a sump.

Q. What is a sump?

A. A sump is a place that is made to hold water.

Q. When you left there where did you go?

A. Went back to Wenonah.

Q. What mine?

A. Number 9.

Q. What time did you get back to Wenonah?

A. Must have been about January, 1918.

Q. Have you been continually at Wenonah—

A. With the exception of the time I spent in the army in the World War.

Q. How long were you away?

A. That was from May, 1918, to about—somewhere around September, 1919.

Q. With the exception of that time you have been at Wenonah all the time?

A. Yes, sir.

Q. What positions have you held since you have been there continuously since 1917?

A. Well, I was pump man and shaker repairman; drill runner, section foreman, head blaster, assistant mine foreman and mine foreman.

Mr. Harris:

I didn't hear the third from the last there,—head what?

The Witness:

Head blaster.

Q. What were the duties of the head blaster?

A. At that time the head blaster laid out the holes for the men to drill and looked after the quarrying in the working places, and then he came around in the afternoon and told them how much powder to put in the holes to shoot, and gave them requisitions for it.

Q. Have you been in the same mine all that period of time?

A. No, sir.

Q What mines have you worked in in these various capacities since you came back to Wenonah in 1917 to be there permanently?

A. 7, 8, 9, and 10.

Q. Worked in all four mines?

A. Yes, sir.

Q. In how many have you been assistant mine foreman and mine foreman?

A. In all four of them.

Q. You have been mine foreman how long now?

A. When they were running, since 1929.

Q. Those mines, during what we call the depression, some of them ran and some didn't?

A. Yes, sir.

Q. You went about from place to place serving at different mines?

A. Yes, sir.

Q. As I understand you served as foreman during that time—

A. No. There were times when I was assistant mine foreman on account of only one mine running, and the—

Q. Senior foreman would take precedence?

A. —senior foreman who would take precedence.

Q. I see. Now, it is my fault because I don't remember it, but what mine is it you say you have been foreman at and you are foreman there now and have been—

A. Number 9.

Q. Number 9. When did you first commence working in Number 9, if you remember about when? When did you first know it?

A. You mean in a foreman's capacity?

Q. No; in any capacity.

A. About 1913.

Q. Do you recall back there about how far the slope in that mine had been driven at that time?

A. Yes, sir.

Q. About how far down?

A. Down to 70 heading.

Q. 70?

A. 70, yes, sir.
Q. Do you know how far that is down from the top?
A. No. It is approximately 3000 feet, I think.

Mr. Burr:
Would you mind putting the Wenonah map on the wall for me? Put it over that one if you want to.

(Thereupon a map of the Wenonah Division was placed on the blackboard.)

Mr. Burr:
Mr. Cameron, have you got your ruler? Will you come here and give these straight lines for me, if you can? Mr. Cameron, I want to get the approximate measurements. Of course, you can't follow the curves, if there are any curves.

Q. What was the name of the heading you say the slope was down to when you first went in there?
A. Number 70 heading.
Q. Number 70 heading?
A. Yes, sir.

Mr. Burr:
How far, in a straight line, was that from the mouth of the mine, Mr. Cameron?

Mr. C. B. Cameron:
(After scaling the map.) About 2400 feet.

Q. Your estimate was it was about 2500 feet?
A. Yes, sir.
Q. All right, sir. Now, about how far down, Mr. Scott, in your judgment, has that slope been driven down to, say, May 1, 1941, using that as a date?
A. Well, it has been driven about 3500 feet further.

Mr. Burr:

I see. Now, give me the straight line measurement.

Q. To what heading was it driven to?

A. It has been driven down to an ore pocket.

Q. Ore pocket?

Mr. C. B. Cameron:

About 6400 feet.

Q. Now, Mr. Scott, have the headings also been extended, or some of them, since you were first there?

A. Well, since all the headings that were there at that time have been worked out, and there have been new ones turned off the slope there, and worked out, and in the present workings, where we are working now, the headings extend about—the longest is probably about 1500 feet and the shortest four or five hundred feet.

Q. And, of course, they will be extended until you strike the property lines or the ore gives out?

A. Yes, sir.

The Court:

Don't they run into other slope workings?

The Witness:

Yes, sir; there are mines on each side. We work out to each other's territory.

Q. On the slope territory—

A. It is between Number 8 and Number 10 slopes.

Q. Are they already through or not?

A. Beg pardon?

Q. Are they through or not to the other—

A. There are none of the Number 9 headings through to Number 10, but on the Number 8 side it is all finished but about two or three working places.

Q. About how many men were you working on your shift about May 1, 1941?

A. Well, about a hundred and thirty to a hundred and thirty-six men on the day shift and about ninety-five to one hundred and five on the night shift. We worked more on the day shift than on the night shift.

Q. Do you have one shift all the time or do you alternate?

A. We alternate.

Q. Who was your switch partner as mine foreman?

A. R. R. Barfield.

Q. Who?

A. R. R. Barfield.

Q. R. R. Barfield?

A. Yes, sir.

Q. Mr. Scott, using May 1, 1941, as a date line,—as a date,—I wish you would please take a member of a production crew and start him at the bath house and put him through what he does from that time on until he comes back to the bath house at night? Can you do that for me, you think?

A. If that prior to May 1st?

Q. Prior to May 1st. I know there have been some changes since then.

Mr. Harris:

How far prior?

Mr. Burr:

Immediately prior, and then I will show how long that same course has been in existence.

A. Well, he would get to the bath house and change clothes, and it is about 250 yards to the tally house, somewhere between six and six-thirty, and he would deposit his check number and secure his carbide, if he needed it, from the timekeeper or man there in the tally house, and he would get on the mantrip and ride—

Q. Let's stop right there. How did he secure his carbide?

A. He would deposit his check, and if he wanted carbide he would ask for carbide.

Q. Would the same man who received the check give him carbide?

A. Yes, sir.

Q. You didn't receive the checks yourself?

A. Yes, sir, I received the check myself and gave him the carbide and the timekeeper hung the check on the board.

The Court:

Did he return an empty can?

The Witness:

Yes, sir, if he had it.

Q. You say "if he needed it"?

A. Yes, sir.

Q. Did he get carbide every day?

A. Some will use more than others. Some, a can will last them two shifts, and some will get it every shift.

Q. They would get it as they needed it?

A. Yes, sir.

Q. Is it obligatory to get it there, or can they get it where they please?

A. I don't believe I ever heard of a rule telling them to buy it from the company.

Q. Most of them get it there?

A. Yes, sir, it is more convenient to get it there, and cheaper too.

Q. After he deposits his check and gets his carbide, say, he catches the first trip, what time would he leave?

A. We used to pull the first skip prior to May 1st when the six o'clock whistle blew, and run a test trip down

to the loading station, and that took from six to nine minutes to do that.

Q. I see.

A. And when the skip came back from the test run, the first mantrip was loaded up and sent to the man loading station.

Q. Was there any particular order in which they rode? I mean by that were the men scheduled to go on any particular trip or did they get on any trip they wanted to?

A. They went on any trip they wanted to.

Q. What you are telling me about your understanding is prior to May 1, 1941?

A. Yes.

Q. That is when the change was made to portal-to-portal, was it not?

A. Yes, sir.

Q. I think either you or I used the day May 31, and we meant May 1st.

All right, sir. If a man gets on a mantrip at the Wenonah Division does he necessarily go down with his headminer or not?

A. No, sir.

Q. What would be the usual rule whether he was on the same trip with his head miner or wouldn't be with him as a rule?

A. It would be hard to get every man on there with his head miner because they come up there at different times, and we hold the head miners out to see if his men get there.

Q. In other words, the crews are not assembled on top at all?

A. No, sir.

Q. All right, sir. He rode down to what point?

A. Rode down to a loading station about 100 feet above the ore pocket.

Q. Did they normally carry any tools down on the mantrip?

A. No, sir.

Q. After he got down to the unloading station, what did he do?

A. He would go on to his working place.

Q. When he got to his working place—At what time did the juice come on?

A. At 6:45.

Q. What time did his pay time start?

A. At 6:45.

Q. What time did his pay time end?

A. 3:15.

Q. At what time did you shoot ore in those mines?

A. Well, we blink the lights—flash the lights at 3:10, and that was the signal for the men to light their holes, and then the current was cut off at 3:15. That gave them five minutes of current there so they could move their drag scrape or anything they might need to move out of the way before they shot their holes off.

Q. Was there at this time any lunch period?

A. Yes, sir.

Q. How much was the lunch period?

A. Thirty minutes.

Q. Was any signal given for that thirty minutes?

A. Yes, sir.

Q. What was that signal and when was it given?

A. The lights were flashed at 11:30 to begin the lunch period and flashed again at 12:00 o'clock to resume work.

Q. Was that lunch period on—were they paid for the lunch period or was that—

A. No, sir; it was on the men's time.

Q. On the men's time?

A. Yes, sir.

Q. All right, sir. What was the usual practice in reference to lighting the fuses? Who did that? Whose responsibility was that and who did it in actual practice?

A. The drill runner and the man that helped him would do the lighting. The head miner would stay there

with them. If there were two drill men, we usually let the drill helper go ahead and the two drill men and the head miner stayed there. If there was one drill runner they kept the helper there.

Q. In other words, they kept the drill helper to set the fuses?

A. Yes, sir.

Q. What did the muckers do?

A. Come on to the loading station.

Q. What would you say was the time of the muckers leaving the working place?

A. I gave them orders not to leave until 3:10, but some of them left a little earlier. They left at various times from three o'clock to 3:10.

Q. And walked out just like they walked—

A. Yes, sir.

Q. How was the grade in your mine; was it downgrade or upgrade from the manloading station to the working places?

A. Going from the loading station to the working places where they turn off the manway, it is practically level, but in the working places there are some places that are upgrade and some downgrade. We have a minimum grade of five percent—I mean a maximum grade of 5 percent. We try not to have more than that, and in some places it is less than that.

Q. All right. Now, Mr. Scott, how about the—how are the tools handled at your place? First, have you got a tool house or not on the outside,—a supply house, I mean?

A. Outside?

Q. Yes, sir.

A. The division supply house is on the outside that supplies all four of the mines.

Q. Where is that division supply house located?

A. It is located down near Number 8 mine near the shops.

Q. Is it shown on that map?

A. No, sir; it would not be; it is an underground map.

Q. I am talking about the outside supply house; that is not shown on the map?

A. No, sir.

Q. What supplies are kept in that outside division supply house?

A. Pipe fittings, hammer handles, pick handles,—everything they need for the operation of the work over there.

Q. Inside and out?

A. Yes, sir.

Q. Do you know what time in the morning that supply house opens?

A. No, sir, I don't. Sometimes I have called there at 6.30 over the phone and there would be a man to answer it.

Q. Have you ever been able to get anybody there before 6:30 or not?

A. I don't believe I have been.

Q. You have got phone connection down there from where?

A. From the tally house.

Q. From the tally house?

A. Yes, sir.

Q. Mr. Scott, how did yours and these other Wenonah mines that you know of,—how did they get supplies that went inside the mine delivered? What were the steps in that?

A. Well, the mine foreman would write a requisition, and the truck driver usually picked the requisitions up and carried them to the supply house—

Q. Now, is that truck driver an outside employee?

A. He is an outside man, and he would come up to the different mines in the morning to deliver the drill steel, and when he did he would take his requisitions back.

Q. Where and by whom would the requisitions be delivered at the mouth of the mine?

A. He would bring the material back.

Q. The truck driver?

A. Yes, sir.

Q. Where would he put it, when he brought it back?

A. He would put it on the yard, or if he had some heavy pieces he might put it on the larry, just transfer it.

Q. Where did that larry stay when it wasn't in use?

A. Stayed on the sidetrack on the surface.

Q. What is that car?

A. It is a flatcar with stakes and a back on it, and has a sling rope to couple it—

The Court:

Has what?

The Witness:

Has a sling rope about eight or ten feet long to couple to the ore skip.

Q. And the material is carried down in the mine in that way?

A. Yes, sir.

Q. Was that larry material ever used or hauled in the mine when the mantrips were going down or not?

A. No, sir, not the regular man skips when we were hauling the men down to work.

Q. When you were hauling the men down to work was anything hauled except the men?

A. No, sir.

Q. If the truck driver didn't put the material on the larry, who did that?

A. The men that hauled the material down.

Q. That was an inside service crew?

A. It is an inside service crew.

Q. What do you call that crew?

A. It is a service crew. It works a split shift. They come on when the day's work of the mining crews is over, and they work until the next crew comes in, and their work is over until the next morning.

Q. Where would that material be hauled in the mine?

A. To the material way. We have a place where material is unloaded and then we take it by motor to the various parts of the mine.

Q. This material way, where is it located?

A. It is located about fifty feet above the man loading station.

Q. Is it located at the same place in all the mines, or at different places?

A. No, sir; at different places.

Q. Can you tell us where it is located at the other mines?

A. Well, Number 8 has a double slope, in other words, it has an auxiliary slope in addition to the main slope, and the material way in Number 8 is approximately 700 feet below the manloading station and they unload material there and it has to be transferred by other crews back into the workings when the shift comes on.

Q. When this material is hauled down and deposited at the material way—is there any house there?

A. No, sir, just a level place there.

Q. Just a level place there?

A. Yes, sir.

Q. Where is it delivered from there, and by whom?

A. The drill steel is carried out to the headings by the service crews. The service crews take the dynamite around to the powder house; the service crews unload it and put it in the magazine.

Q. You have a regular magazine?

A. Yes, sir.

Q. What else?

A. The service crew takes the small supplies and puts them in the tool house.

Q. What do you include in your designation of small supplies?

A. Pipe fittings, drill valves, pick handles, hammer handles, hangers, wedges, short drill steel and C-hooks.

Q. C-hooks?

A. Yes, sir.

Q. That covers it?

A. Yes, sir.

Q. Is that tool house locked or not?

A. It is kept locked except when the shift is in operation.

Q. Who has charge of the keys of it?

A. We have a powder man that looks after the powder house and looks after the tool house also.

Q. In your mines, the powder man handles both the powder house and tool house?

A. Yes, sir.

Q. How close are they together?

A. The magazine is about 70 feet from the tool house.

Q. Do you know what time, in reference to the shift, using the morning shift as an illustration, the tool house is unlocked?

A. We usually open the tool house about 6:45.

Q. 6:45. How is this small material you told us about gotten up into the working stopes?

A. Some men, if they need hangers or something like that, would stop by the tool house as they went to the stope,—hangers or wedges, or sometimes they would send back and get them.

Q. Either way?

A. Yes, sir.

Q. Sometimes you said they would get it on the way up?

A. Yes, sir.

Q. I believe you said they didn't open the tool house until 6:45?

A. Yes, sir.

Q. The heavy drill steel, is that put in the tool house?

A. No, sir.

Q. How is that taken to the working places?

A. It is delivered by the service crew with a motor on either cars or a larry.

Q. If that heavy steel needs sharpening or repairing or anything of that sort, how is that handled?

A. The head miner loads the dull steel on his loaded tram cars and the motor brings it out of the working place, and it is thrown off and picked up by the service crew and taken to the material way and unloaded where this hauling crew can get it.

Q. And then it is carried outside?

A. Carried outside by the hauling crew or service crew.

Q. During what period of time does the head miner have this dull steel loaded on a car?

A. Sometimes during the working time. Usually the drill runner gets done about an hour before shooting time, and they bring the dull steel down and load it on the loaded cars.

Q. Where is that car with reference to his working place where he is working?

A. Right there at it. It is a car they are loading at that time.

Q. They put it on top of the ore?

A. Yes, sir.

Q. About the powder, how is the powder handled at your division?

A. How do they secure the powder?

Q. Yes, sir, how do they secure it and through whom do they secure it?

A. They send a requisition by the drill man or maybe two men to the powder man, and he issues the powder something like an hour before shooting time.

Q. Is that powder ever delivered on requisition before 6:45 or after 3:15?

A. No, sir.

Q. The powder you refer to as powder is what an ordinary layman like me would call dynamite?

A. Yes, sir.

Q. Now, I believe I have asked you about all your tools over there except oil. I don't know how you handle your oil. Tell us about that.

A. Sometimes a man will get his oil in the morning when he is going in the working place, and sometimes send back for it, and a good many of them, when a man comes to get his powder, he will bring an oil can and take it back to the other shift.

Q. That is the way they handle it?

A. Yes, sir.

Q. How is the oil kept?

A. It is kept in a tank with a pump on it, and anyone can go there and get it.

Q. There is no one there guarding the oil?

A. No, sir.

Q. They can come and get it when they want to?

A. Yes, sir.

Q. What do they get it in?

A. Some of them have gallon cans and some of them half gallon cans.

The Court:

What is that oil for, to lubricate those machines?

Q. Tell him about that, Mr. Scott.

A. To lubricate the drills.

Q. Now, you have hose pipe?

A. Yes, sir.

Q. Where is that obtained from?

A. It is obtained from the supply house originally, but the hose pipes stay in the working place. The only

time they need extra hose is when the place is extended, and in that case the pipe man carried them a section and puts it on for them.

Q. Do they have any duties to perform in connection with the air hose or water hose outside the working place?

A. No, sir, not the heading crews.

Q. That is what I mean; I am talking about the heading crews.

A. No, sir.

Q. I believe that gets the heading crew's tools. Tell me about the slope track crew and timber crew and carpenters and so forth. Where does their pay time begin?

A. It starts at 6:45.

Q. At what place?

A. At the tool box where they get their tools.

Q. That is where they go first?

A. Yes, sir.

Q. After they get off at the unloading station they go to their tool box?

A. Yes, sir.

Q. And that is where their time starts?

A. Yes, sir.

Q. Where does it end?

A. It ends at 3:15. They usually have their tools put away either by or before that time.

Q. What time do they usually have their tools put away and their work is through for the day?

A. A few minutes after three o'clock.

Q. A few minutes after three o'clock?

A. Yes, sir.

Q. Do they usually catch the first trip out by doing that or not?

A. Yes, sir.

Q. They are ahead of the production crews?

A. Yes, sir.

Q. Did I ask you what time the first skip goes out in the afternoon?

A. No, sir.

Q. What time does it go out?

A. It would be 3:15 or as soon after 3:15 as we can get the skip. It might have just gone out with a trip of ore, and it will have to come back,—about two or three minutes.

Q. And then would it go out at regular intervals?

A. Yes, sir, about every eight or nine minutes.

Q. How many trips did it take to get your men out?

A. About three trips on the night shift, and about four on the day shift.

Q. About the same number coming in?

A. Yes, sir.

Q. I want to ask you, Mr. Scott, whether, prior to May 1, 1941,—whether any of these mines or any other mines you have ever worked in in this country,—in this state, the men were ever paid for any part of the traveling time?

Mr. Harris:

We object to that; involves both ore and coal mines, as I understand.

The Court:

You had better ask as to ore mines.

Q. Well, confine it to the ore mines.

Mr. Harris:

The same general objection we have raised.

The Court:

As to ore mines too?

Mr. Harris:
Yes, sir.

Q. What has been the universal custom in the mines—

Mr. Harris:
We object to the universal custom.

Mr. Burr:
I am asking about the mines he worked in.

The Court:
Those he worked in?

Mr. Burr:
Yes, sir. I never asked about any except the ones in which he worked.

Q. Has that been the universal custom in the mines in which you have worked up until May 1, 1941?
A. Yes, sir.
Q. During that entire period of time while you were mine foreman or assistant mine foreman, I will ask you to state whether or not any underground workers ever complained to you about the traveling being on their own time?
A. No, sir.

Mr. Harris:
We object on the ground the testimony shows he is not the man who negotiated contracts.

The Court:
Overruled.

Q. Did they ever request of you they be paid for any part of that time at any time?

A. No, sir.

Q. Has it been customary in those mines, Mr. Scott, down there for the last several years, and I will get you to tell me when that started, if you know, for all employees to receive a statement of their account and sign a receipt on each payday?

A. It seems to me like ever since I can remember you always got a statement, but I don't remember whether they used to always sign it or not.

Q. Well, how long, within your recollection, have they all been signed? How far back does that go, within your recollection, of signing these pay statements?

A. Back about 1920, I believe.

Q. About 1920?

A. Yes, sir.

Q. Now, since they have been issuing those statements, have they always been issued four times a month or a less number of times per month back further back?

A. They used to have two-weeks paydays, and issued them twice a month.

Q. Do you remember when the four week paydays went in effect out there; do you recall that?

A. I remember it, but I couldn't recall the date.

Q. You don't know? Have you got any judgment about it at all? Has it been a few years or several years? That is what I—

A. It has been just a few years.

Q. I see. Do you recall about when what has been called the incentive plan,—about when the incentive plan went into effect?

A. Yes, sir.

Q. About when was that?

A. That was sometime in '36.

Q. Well, under the incentive plan, what has been the standard crew on the incentive plan basis in the productive part of the mine?

A. Well, we have a crew—are you talking about stoping crews?

Q. Yes, that is right, about stoping crews.

A. We have a seven-man stoping crew. That included two drill men, a head miner, a drag operator, and three section helpers. We had some stoping crews where there were just one drill man. That was a six man crew. There are some stoping crews in narrow work that were five men crews.

Q. Previous to the incentive plan going into effect, what was the procedure in reference to the men being paid? In other words, did they get a guaranteed wage and bonus above that, or was it on a task basis or what was it at these mines?

A. Well, prior to the incentive plan, they got a certain wage rate per day, per eight hours.

Q. Per eight hours?

A. After that incentive plan they got their guaranteed wage plus what percentage they might earn.

Q. That was based on a certain standard amount, and above that amount they commenced to get a percentage bonus, incentive earnings?

A. Yes, sir.

Q. Do you recall about when the eight-hour day went into effect out there in the Wenonah Division, what time it was?

A. It must have been sometime in '36, I believe.

Q. The 8-hour day?

A. I don't remember exactly. It might have been earlier than that. I think it was when this Code business was in effect.

Q. When this Bituminous Coal Code went into effect; it followed that?

A. I think it did.

Q. Now, when you had the 10-hour day before that, what was your time for the workday beginning in the mines under the 10-hour day?

A. Well, the men had to be checked in before 6:30, and we went to putting them underground at 6 o'clock and got them down there as soon as we could.

Q. Had to be at their working places by 6:30?

A. No; they had to be all checked in by 6:30. Their quitting time was 4:30.

Q. When did the pay time start, and where?

A. The pay time was supposed to start at their working places. They were supposed to put in ten hours at their working places.

Q. Was the lunch hour included in that? Did they take lunch on their own time or the company's time?

A. They had lunch whenever they got an opportunity to do so.

Q. It was all company time back in the old days?

A. Yes, sir.

Q. Was this task plan in effect in those days?

The Court:

What period?

Mr. Burr:

Task.

A. When are you speaking of?

Q. At any time.

A. When I started working at the mines and when I came back in 1919 the men were on a task basis of ten 2-ton cars per shift.

Q. And when they finished the shift, could they leave the mines?

A. Yes, sir, they could leave at any time they wanted to after they loaded their cars.

Q. About what time did they finish loading their cars?

A. Some loaded them by 10:30 or 11:00 o'clock and walked out. Some of them would be 2 or 3 o'clock. Some of them loaded them all day.

Q. It depended on the men themselves?

A. Yes, sir.

Q. Now, on May 1, 1941, what changes were made in reference to the men's transportation in the mines, the time they went in and the time they came out and things of that sort?

A. Well,—

Q. That is when you changed to the portal-to-portal plan?

A. Yes, sir. Before that time we didn't pull the skip out of the side track until 6 o'clock, and now we run this test trip and have the skip waiting at 6 o'clock.

Q. I see.

A. And the men were all ready to check in and immediately the 6 o'clock whistle blows they go to checking in and as soon as we can get a skip loaded we send it on down.

Q. Is that since this portal-to-portal plan started?

A. Yes, sir.

Q. Do they go down any quicker in the skip now or about the same?

A. Just about the same.

Q. When they get down do they go any quicker to their places of work?

A. They are supposed to go immediately to work when they get there.

Q. Under the old system what time were they supposed to start work?

A. 6:45.

Q. Now, when they get there they are supposed to start to work?

A. Yes, sir.

Q. What is the shooting time under the present system?

A. 1:45.

Q. What is the leaving time of the car going out?

A. 1:45.

Q. 1:45?

A. Yes, sir.

Q. And they go out the same way they used to, as you estimate, about nine minutes apart?

A. Yes, sir.

Q. So they are in the mine an hour and a half less time than they used to be; that is about the way it figures out, isn't it?

A. Yes, sir.

Q. What time does the last car get out? What time is the last man in the mine out, the last mantrip?

A. That would be around 2:20 or 2:25.

Q. Is that when they get to the entrance of the mine?

A. Yes, sir.

Q. What we have been calling the portal?

A. Yes, sir.

Q. State whether or not everybody is out of the mine under the present system by or before 2:30 at your mines?

A. Sir?

Q. Are they out of the mine by or before 2:30?

A. Yes, sir, they are out by or before 2:30.

Q. Have you been working substantially the same crew since May 1st that you did before?

A Yes, sir.

Q. Same personnel?

A. Yes, sir.

Q. And they have been working in the same stopes substantially?

A. Practically the same thing.

Q. The same head miners with the same crews?

A. Yes, sir.

Q. Been using substantially the same sort of equipment they used before?

A. Yes, sir.

Q. Been riding down in the same skips?

A. Yes, sir.

Q. The only difference is what you have told us with reference to the time?

A. Yes, sir.

Q. Have you observed whether the production has fallen off or stayed about the same?

Mr. Harris:

We object to that.

The Court:

I don't think it is material.

Mr. Burr:

Your Honor has allowed us to show it with other witnesses.

Mr. Harris:

We objected to it all along.

Mr. Burr:

There certainly couldn't be any doubt about it.

The Court:

I will let you—

Mr. Burr:

I don't want to get the details. I want to get the figures.

Mr. Harris:

He gives it by a summary.

Mr. Burr:

If he knows fewer cars come out now than there did before, it is certainly material.

Mr Harris:

We say it is not material.

Mr. Burr:
It is the highest kind of materiality.

The Court:
What is your question.

Mr. Burr:
Whether or not under this new regime, portal-to-portal, as they call it,—whether or not production has increased or decreased to his own knowledge.

Mr. Harris:
We object.

The Court:
I will overrule it.

Q. What about that?
A. It has decreased.
Q. Can you tell me what the decrease is in correct figures?

Mr. Harris:
Same objection.

The Court:
Same ruling.

A. I can tell you approximately.
Q. Well, tell me approximately.

Mr. Harris:
Same objection.

The Court:
Same ruling.

A. It is approximately 150 tons per shift.
Q. I didn't understand you.
A. It is approximately 150 tons per shift.
Q. That is for each workday?
A. For each shift.
Q. It would be double that for a day?
A. Yes, sir.

Mr. Burr:
That is all.

Cross Examination.

(By Mr. Harris):

Q. Does the Tennessee Coal, Iron & Railroad Company have an employment office?
A. Yes, sir.
Q. Do you have charge of it?
A. No, sir.
Q. In the employment office do they determine who they shall hire, what men shall go to work?
A. I suppose they do.
Q. Do they determine the rate of pay at the employment office? When they hire a man do they tell him the rate of pay he will get?
A. No, sir.
Q. When a man comes to you and reports to you for work, does he ask you what he is going to get paid?
A. No, sir.
Q. If a service man comes to work for you, does he come up and ask you, "Mr. Scott, what am I going to get paid?"
A. No, sir.
Q. You don't have anything to do with his pay and never have?
A. The only time I would have anything to do with his pay would be on the job I would put him on.

Q. Yes. If the necessities of the job under your supervision demands, you could move him from one type of work to another, and that type of work might carry a different rate of pay; that is what you mean?

A. Yes.

Q. But you had nothing to do with fixing his rate of pay or his classification when he was employed?

A. No, sir.

Q. And you couldn't change it after he started could you?

A. No, sir.

Q. And you didn't sit in on the negotiations for an increase in the rate of pay, did you?

A. No, sir.

Q. And you were not one of those on the company's staff that figured out the incentive plan, were you?

A. No, sir.

Q. You don't know whether the men had anything to do with figuring out that incentive plan or not, do you?

A. No, sir.

Q. Now, what do you mean by a split shift?

A. That is a shift that makes part of the shift in the morning and part of it in the afternoon.

Q. Well, you don't mean to tell me that you have men that can actually be working in the mines after the shots are fired and before another shift comes on?

A. No, sir; they are not in the mines where the shots are fired.

Q. They are underground, are they?

A. They are on the slope.

Q. How far underground would that be?

A. As far as the slope goes.

Q. In your mind it would be 6000 feet?

A. Possibly sometimes.

Q. Is it as far down as the pocket?

A. It could be down as far as the pocket.

Q. Well, the air is all right down there while they are working between shifts, isn't it?

A. Yes, sir.

Q. And how long has it been you have had men working out there at Number 9—I believe yours is Number 9, isn't it?

A. Yes, sir.

Q. How long have you had men working down there on those slopes 6000 feet underground betwen shifts?

A. I don't remember when they started using this split crew.

Q. What is your best judgment?

A. Four or five years.

Q. What kind of pocket is it you have there at Number 9, how much ore will it hold?

A. Holds a railroad car.

Q. Just one railroad car?

A. One railroad car.

Mr. Burr:

Talk a little louder, Mr. Scott.

A. One railroad car.

Q. When you haul the ore out of the mine, or hoist it out, whatever phrase you use, do you hoist just one skip of ore at the time?

A. Yes, sir.

Q. And that goes on all the time; you bring it up one skip at the time?

A. Yes, sir.

Q. Now, the mine itself has little tracks running all around through it underground, doesn't it?

A. Yes, sir.

Q. What is the side rail those tracks have?

A. 60 pounds.

Q. And the little cars are pulled with electric motors?

A. Yes, sir.

Q. And how many cars at a time are pulled by one locomotive?

A. Four cars.

Q. Do they go faster than a man walks?

A. Yes, sir.

Q. What is the speed with which they travel down under there?

A. About twelve miles an hour.

Q. Twelve miles an hour?

A. Yes, sir.

Q. And do those tracks with those electric locomotives run not only all over the mine, but up close to the working stopes?

A. Yes, sir.

Q. What would you say was the average where those tracks came to the working stopes?

A. They come immediately by the working stopes.

Q. Immediately by them?

A. Yes, sir.

Q. And that has been in that condition for the last three years, hasn't it?

A. Yes, sir.

Q. And those electric locomotives stay down in there all the time; you don't bring them out at night?

A. They stay underground, but the electric locomotives don't go in the immediate workings where they are loading the cars.

Q. That is what I know; that is what I asked you,—How close they came to it.

A. You said the tracks.

Q. How close do the electric locomotives come?

A. It comes to the sidetrack.

Q. How far is that?

A. It would be about 75 or 100 feet from the place where they are loading the ore.

Q. Where the mechanical loader is working?

A. Yes, sir.

Q. And it backs the cars in on the side track and cuts loose and goes on and hauls them to some other heading, is that right?

A. Yes, sir.

Q. You say the average speed throughout the mine those locomotives can make is 12 miles an hour?

A. Something like that. It might be a little more and it might be less.

The Court:

Excuse me a minute. All right; go ahead.

Mr. Harris:

We are through.

The Court:

You are through? Anything for you, Mr. Burr?

Mr. Burr:

Just a minute. I don't think there is anything else. Just one question.

Re-Direct Examination.

(By Mr. Burr):

Q. Under the 10-hour system, what time did the man's pay work begin, that they paid him for?

Mr. Harris:

He asked him that once.

Mr. Burr:

I will ask him again. The gentleman didn't understand that.

A. He is supposed to be paid from 6:30.

The Court:
Anything else?

Mr. Burr:
That is all. Come down.

(Witness excused.)

Mr. Burr:
Judge, that is as far as I can go this afternoon on account of the matter I mentioned to you.

The Court:
It seems to me, gentlemen, we go a little bit into detail on some things that are not very material to this case the way I view it. We will try to make a little better time beginning tomorrow morning.

Mr. Burr:
All right. We will try to do that.
Of course, it will get shorter as we get through with each division.

The Court:
I don't see the necessity of going into a man's long history about mining coal.

Mr. Burr:
Well, I don't think that takes over five or ten minutes, and as I stated to Your Honor, as quick as I can get my authorities together, I am going to convince you the coal mines are as important in this case as the ore mines, and I want to save these fellows coming back, if I could.

The Court:
Well, I—

Mr. Burr:

With reference to these minutes, these gentlemen have given us a list of the minutes they have, but they haven't let us see the minutes yet. That is the minutes of conferences with the T. C. I. officials.

The Court:

Have you got the minutes they gave the dates of?

Mr. Burr:

I don't know.

Mr. Harris:

That is why I gave them to him.

The Court:

If you have the dates you can check the minutes.

Mr. Burr:

I don't know until I check them whether they are the same minutes.

Mr. Harris:

I gave him a list of them. They were kept in their offices by their stenographers, who wrote them down. I have given him a list of them—

Mr. Burr:

Now I—

Mr. Harris:

He can look at those and tell whether any of those are missing from their files.

Mr. Burr:

I can look at these minutes and in five minutes tell whether I want them or not. I don't see why I should be called upon to check a stack of minutes that high—

The Court:
Wouldn't it be easier for you to look at that and see whether you want them?

Mr. Burr:
No, sir. I would have to go through a stack that high (indicating).

The Court:
Let him see them.

Mr. Harris:
Judge, all he wants to do—

Mr. Burr:
I want to see if they are the same as mine.

Mr. Harris:
His secretary kept minutes and typed them—

Mr. Burr:
I haven't—

The Court:
Just a minute, Mr. Burr.

Mr. Harris:
His secretary kept minutes and typed them, and then after typing them they handed them over to us. He wanted to know what minutes we had. We have given him a list of the minutes we have. Now, he says he wants to take our files and go to his office and check them over with his minutes to see if our minutes which they gave us read like his minutes which he kept.
I say he is not entitled to do that.

The Court:
The other day, my recollection is—

Mr. Burr:
Will Your Honor hear me on that?

The Court:
Yes, sir.

Mr. Burr:
We turned these minutes over to them and haven't had them since we gave them to them. In other words, the undisputed evidence is that the secretary made minutes and they were signed by both factions and one copy turned over to them—

The Court:
Mr. Burr, I will permit you to check the minutes you have against the dates and any dates you haven't on hand I will require them to produce them.

Mr. Harris:
Very well.

Mr. Burr:
Your Honor is going to put the burden on me to read through all the minutes?

The Court:
No.

Mr. Burr:
That is what it will make me do.

The Court:
No, I don't see it that way. As testified by Mr. Ball—he named the man who took the minutes and wrote them off.

Mr. Burr:

Judge, my minutes are here open for everybody to see, and then I am going to subpoena those minutes, and if they are not produced I will see what action I shall take.

The Court:

I have told you what I am going to do.

Mr. Burr:

Well, we take an exception.

If there is any reason why we can't see the minutes, which are not confidential, I don't see what it can be.

The Court:

You can check your list, and if you haven't got them they will be required to produce them.

Mr. All:

Judge, if the minutes bear the same date is there any presumption they are the same minutes?

Mr. Harris:

You don't have to argue that.

The Court:

He has given you the dates of the minutes. Any you don't have, they will be required to produce them.

Mr. Burr:

If those minutes are relevant testimony, they are supposed to be produced in the Court. If they are not relevant they are not required to be produced.

The Court:

That is the Court's ruling.

Mr. Burr:

Yes, sir. We will subpoena them.

The Court:
Court is adjourned until 9:30 tomorrow morning.

(Whereupon, at 4:10 P. M., July 14, 1941, an adjournment was had to 9:30 A. M., July 15, 1941.)

July 15, 1941, 9:30 A. M.

Court met pursuant to adjournment.

The Court:
Who will you have?

Mr. All:
Your Honor, we are going to put on some of the testimony with respect to the Sloss operations beginning this morning.

The Court:
Proceed.

Mr. All:
Mr. Harper.

1264 A. F. HARPER, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. All):
Q. Your initials, Mr. Harper?
A. A. F.
Q. A. F. Harper?
A. Yes, sir.
Q. Mr. Harper, how old are you?
A. How old am I?

Q. Yes, sir.
A. 48.
Q. Will you outline briefly your mining experience and training?
A. I am a graduate of Alabama Polytechnic Institute and went to work for the Woodward Iron Company in their engineering department in 1911. I left them about nine years later and went with the Sloss people and was with them twelve years, and back with the Woodward Iron Company again three years ago.
Q. Now, what was your—your initial experience was in engineering?
A. That is right.
Q. Was that in connection with the mining operations?
A. Yes, sir.
Q. And how much experience briefly, did you have in that?
A. In engineering work?
Q. Yes, sir.
A. Nine years.
Q. Did that have to do with the laying out of underground operations?
A. Yes, sir.
Q. Then after that nine years experience what did you do?
A. I went with the Sloss-Sheffield Company, and in 1920 I was made superintendent at their Irondale mine.
Q. At their Irondale mine?
A. Yes, sir.
Q. How long did you remain there?
A. One year.
Q. From there where did you go?
A. Back in the engineering department.
Q. Sloss engineering department?
A. Yes, sir.
Q. Mining engineer?

A. Yes, sir.

Q. Then what next?

A. I went with the Woodward as superintendent at the Mulga coal mine.

Q. Then where did you go?

A. I went back with the Sloss Company as superintendent at their coal mines.

Q. And from there where?

A. I went to the Lewisburg coal mines as superintendent.

Q. And from there?

A. I was there five years, and then went to Lessie Mine as superintendent.

Q. How long were you there?

A. Three years.

Q. Then where did you go?

A. To the Sloss ore mines.

Q. As what?

A. Superintendent.

Q. You remained there how long?

A. Five years.

Q. As superintendent?

A. Yes, sir.

Q. Of the Sloss ore mines?

A. Yes, sir.

Q. And from there you went back to Woodward?

A. Yes, sir.

Q. And since then you have been superintendent of one of their coal mines?

A. Yes, sir.

Q. Mr. Harper, were their coal mine and ore mine operations both underground operations?

A. Sir?

Q. Was their coal mines and ore mines both underground?

A. Yes, sir.

Q. Now, Mr. Harper, were you familiar with the custom and usage and practice during those years with respect to the computation of work time and the payment for work time in the mines?

Mr. Brodie:
I object.

Mr. Harris:
We object, if the Court please. The question is too general, not confined to ore mines.

Mr. All:
I will restrict it to ore mines for the present, with the same reservation Mr. Burr made.

The Court:
All right.

A. Yes, sir.
Q. What was that?
A. The men were paid for the time they spent at their working places.
Q. At their working places?
A. Yes, sir.
Q. Generally speaking, what classes of men work in the ore mines underground?
A. Well, you might divide it into production men or so-called tonnage men who actually drill and load the ore, and another group would be the haulage crew who handle the ore to the surface; another group would be the maintenance men or service men.
Q. Maintenance men or service men?
A. Yes, sir.
Q. Where were the working places of the production crews?

A. Where was it?

Q. Yes, where was their working place?

A. Well, it was in the location of the mines where they worked, where the mined ore.

Q. Was it in the headings?

A. Headings or stopes.

Q. That is at the working face?

A. Working face.

Q. With respect to the service men, does their time start at a different place in the mine from the production men?

A. Yes, sir.

Q. Where was that?

A. Well, a service man laying track or setting timbers, his time would start where he left off the day before.

Q. If he had finished a job did he have—

A. His place would start where he was going to work.

Q. Did they have any assembly place? If they had finished a job, where would they report the next morning?

A. Why, the mine foreman would see him at the yard at the bottom of the slope.

Q. At the bottom of the slope?

A. Yes, sir.

Q. Were the service men—was their work all over the mine?

A. They worked all over it.

Q. Worked all over it?

A. Yes, sir.

Q. Was that true throughout your mining experience?

A. Yes, sir. That is, unless you had something like a hoist engineer, and he worked in one place.

Q. He worked in one place?

A. Yes, sir.

Q. And his work would be where he got his hoist engine?

A. Where his hoist engine was.

Q. During your experience in the mines, has the travel time of the men going from the mouth of the mines to the working places ever been considered or computed as a part of the work time?

Mr. Brodie:
We object.

Mr. Harris:
The word "considered"—

Mr. All:
I mean computed and reckoned under time worked.

Mr. Brodie:
I interpose an objection to that.

The Court:
On what grounds?

Mr. Brodie:
The custom is not binding—

The Court:
As I understand by that you mean the practice and custom of the company he was working for?—

Mr. All:
Yes, sir, the practice of the company he was working for.

The Court:
With that understanding I will admit it.

Mr. Brodie:
May I have my objection and exception?

The Court:
Yes, sir.

Q. All right, Mr. Harper.
A. The traveling time has never been considered.
Q. It has never been considered throughout your experience as a part of the work time?
A. No, sir.
Q. Mr. Harper, we will interrogate you with respect particularly to your experience in the ore mines of the Sloss Company, of which I believe you say you were superintendent from 1933 to 1938; is that right?
A. That is right.
Q. Is that the ore mines the Sloss Company is presently operating?
A. Yes, sir.
Q. How many openings or slopes did the Sloss Company have on Red Mountain?
A. Two.
Q. How many were operating during your day?
A. One.
Q. That was number—
A. Number 2 mine.
Q. Number 2?

The Court:
Where is that mine?

The Witness:
That is right on the edge of Bessemer, on Red Mountain.

The Court:
It is near the Tennessee Company's—

The Witness:
Right between the Tennessee Company's Number 6 and Woodward Iron Company's Number 1.

The Court:
Yes, sir.

Q. It is practically right opposite Bessemer?

A. That is right.

Q. Practically opposite the City of Bessemer?

A. Yes, sir.

Q. That is the one they are operating now?

A. Yes, sir.

Q. Mr. Harper, can you tell us briefly about the general method of mining that was employed by the Sloss Company, the way the mine was laid out? I will ask you, first, is that a slope operation?

A. Yes, sir, it was a slope mine.

Q. A slope mine. And, now, tell the Court what you mean by a slope mine.

A. By a slope mine we mean the entrance to the mine was driven in the ore which pitches about thirty degrees with the horizontal. The mine goes right down in the ore, making the mine set on an angle of about 30 degrees with the horizontal approximately.

Q. Whatever that degree is?

A. Yes, sir.

Q. And the slope was driven in the ore?

A. Yes, sir.

Q. Can you tell us approximately what the depth or thickness of the ore seam or vein in your mine was?

A. It varied from, say, eight to ten feet.

Q. Eight to ten feet this way (indicating)?

A. Yes, sir.

Q. Running this way along Red Mountain it ran for some miles?

A. Yes, sir.

Q. I mean the ore vein?

A. Yes, sir.

Q. And the ore properties of the several companies were all just along the mountain?

A. That is right.

Q. With the Sloss operations you say they first drove a slope?

A. Yes, sir.

Q. And that was right in the ore?

A. Yes, sir.

Q. Now, how far down was that slope driven at the time you went to Sloss in 1933?

A. Well, the ore is not continuous all the way to the end of the workings, not one continuous seam. It goes down and breaks. There were faults.

Q. I mean by that what—what was the last heading down the slope when you got there in 1933?

A. The last heading when I got there was possibly 73 or 74 right.

Q. That is when you got there?

A. Yes.

Q. Now, I will ask you this: As you drive the slope down, as I understand, there are headings driven at right angles to the slope at intervals?

A. Yes, sir.

Q. And can you tell us what distance, approximately, in the Sloss operations, they drove those headings?

A. Approximately 300 feet.

Q. Apart?

A. Yes, sir.

Q. 300 feet apart?

A. Yes, sir.

Q. And when you drove those headings, what did you do?

A. You drive stopes off the heading.

Q. That is, you work out into the ore?

A. Back up to the next heading.

Q. Back up to the next heading?

A. Yes, sir.

Q. And then you drive out at right angles to the slope?

A. Yes, sir.

Q. When you left there in 1938, what was the last heading? How far down the slope—how much further had the slope been driven, according to your recollection?

A. As well as I remember it would be about 84 or 85, maybe. There were some discrepancies in those numbers on account of faults we encountered on the slope.

Q. What was your general method of handling the faults?

A. Drive through them.

Q. Drive through them?

A. Yes.

Q. Now, you say that the production crew work at what is called the face. About how many men constitute a production crew?

A. Well, there are two classes. One would be a hand loading crew, loading by hand with shovels, and another class would be a mechanical loading crew who loaded with a drag.

Q. You mean the drag was operated mechanically?

A. Yes, sir.

Q. And the other way the men picked up the ore with shovels?

A. Yes, sir.

Q. And put it where?

A. In the car.

Q. Put it in the car?

A. The drag crew would be comprised of about eight men on an average, possibly ten sometimes.

Q. In the drag crew who were those men? How would you constitute a drag crew? What did they consist of?

A. The crew was in charge of a head miner. Under him were two drill men, a drill helper, drag engineer and tram engineer, and possibly two muckers.

Q. Now, what about the hand loading crew?

A. The hand loading crew would average five men. That would be a head miner who also drilled. He would have a drill helper and then three muckers.

Q. And three muckers?

A. Yes, sir.

Q. Now, at the time you went there and throughout the time you were there, did the men change clothes for work before or after they got to the mine?

A. They changed clothes before they got to the mine.

Q. Well, you mean before they got to the opening of the mine?

A. Yes.

Q. All right. Now, where did they change?

A. Some of them in the bath houses around the mine, and some of them at home.

Q. The bath house—what bath house facilities did they have?

A. We had a bath house in the basement of the power house and another in the basement of the engine room.

Q. Were there other places there that were used for changing purposes?

A. Yes, sir.

Q. Other buildings?

A. Yes, sir.

Q. Were there facilities to bathe?

A. Yes, sir.

Q. At that time you did not have, if I understand you, a general bath house?

A. No.

Q. Where all the men reported?

A. No, they did not.

Q. Would you say that more of the men had changed clothes before they came or after they came?

A. I couldn't say for sure; approximately half and half.

Q. About half and half?

A. Yes, sir.

Q. Now, when the men got through at the changing—the clothes changing place or bath house or wherever they changed, then where did they go?

A. Going in or coming out of the mine?

Q. I mean going in first.

A. Going in the mine?

Q. Yes.

A. They would go up to the top of the mine and catch a mantrip there and go inside.

Q. Now, before—what time did the first mantrip leave going in?

A. Well, approximately, as well as I remember, about 6:10 or 6:15 in the morning.

Q. Was the mantrip a regular mantrip, or did they use the ore skip to haul the men?

A. It was a regular mantrip.

Q. A regular mantrip?

A. Six cars.

Q. Six cars?

A. Yes, sir.

Q. Have you any idea about what size those cars were?

A. Yes, sir.

Q. What size?

A. Well, they were about 8 feet long, I guess, had a partition down the middle. The men sat on either side facing out. The men sat back to back on the cars, five men on each side of the car, making ten men to the car.

Q. Ten men to each car?

A. Yes, sir.

Q. Was that crowded or was it comfortable—as far as crowding was concerned, was there room comfortably for the men that rode in it?

A. Yes, sir.

Q. And that was true of each one of the cars?

A. Yes.

Q. How many mantrips were ordinarily operated for each trip?

A. Three trips each way.

Q. Three trips each way?

A. Yes, sir.

Q. And what were the intervals between the leaving times of those trips?

A. Be approximately ten minutes, or close to it.

Q. Apart?

A. Yes.

Q. Now, was there a regular starting place for the underground men,—time for them to report and start work at their usual working places?

A. Yes, sir.

Q. Do you recollect what time that was?

A. It was seven o'clock in the morning.

Q. Seven o'clock in the morning?

A. Yes, sir.

Q. Now, what time—What was their quitting time?

A. Well, at first it was 3:30 in the afternoon. Well, let me back up a minute. When I first went to Sloss we were working nine hours.

Q. Nine hours?

A. Yes, sir. That was later changed to eight. On the eight hour basis they went to work at seven, took a half hour for lunch and quit at 3:30. That 30 minutes lunch period was later reduced to 15 minutes, which made the quitting time 3:15.

Q. 3:15?

A. Yes, sir.

Q. What time did the man trips begin to come out?

A. They started out immediately after quitting time, about 3:15 or 3:20.

Q. Yes, sir. Now, Mr. Harper, what did the men, from the time they went to the mine mouth, or what we call here the portal,—did the men take anything in the mine with them?

A. Yes.

Q. In the way of equipment?

A. Yes.

Q. Tell us what they took in? What about their carbide?

A. A man would carry a can of carbide. Everybody carried carbide.

Q. Carried carbide?

A. Yes, sir.

Q. Did he have—each man had a lamp, as I understand it?

A. Yes, sir.

Q. Where was that lamp?

A. On his cap.

Q. On his head, his cap?

A. Yes, sir.

Q. Each man carried his own carbide?

A. Yes, sir.

Q. Where did they get the carbide?

A. They could buy it anywhere they wanted to, at the company's store or some little private stores around sold it.

Q. Were they required to buy it from the company?

A. No, sir.

Q. They could buy it anywhere they wanted to?

A. Yes, sir.

Q. Do you know how the company sold the carbide in the ca s they sold it?

A. The price?

Q. Yes.

A. I think it sold a little sack of about a pound for ten cents.

Q. Ten cents?

A. Yes, sir.

Q. Well, was it sold at cost or approximately cost?

Mr. Harris:

We object. He couldn't possibly know whether it was sold at cost unless he was the purchasing agent.

Mr. Alt:

I mean the understanding, Judge. I don't think it does have much to do with it.

The Court:

Overruled.

A. My understanding, it was sold at cost plus a handling charge.

Q. Where was the commissary? Was it near the mouth?

A. No, sir, it wasn't near the mouth. It was near the Ida mine.

Q. They would bring the carbide with them?

A. Yes, sir, they would bring it with them.

Q. When they catch the man trip, was there anything else the production men—I am talking about the production crews now,—take with them in the mine from the top besides the carbide?

A. They are not allowed to carry anything on the man trips unless it is something they can carry in their pockets.

Q. Yes, sir. All right. Well, where else on that trip did the men pick up anything to take down, if they did?

A. He didn't pick up anything on the mantrip.

Q. He didn't pick up anything on the mantrip?

A. No.

Q. Do you recollect at that time how far that mantrip ran, where it stopped?

A. Yes, sir, I remember. About 3800 or 4000 feet from the surface.

Q. From the surface?

A. Yes, sir.

Q. From the top down?

A. Yes, sir.

Q. Do you remember about what heading that was?

A. The heading was called 48 right.

Q. 48 right?

A. Yes, sir.

Q. Then the men got off?

A. Yes, sir.

Q. Then did they walk or ride from that place on to the working place?

A. They walked the rest of the way.

Q. They walked the rest of the way?

A. Yes, sir.

Q. That is when you first went to Sloss?

A. Yes, sir.

Q. What, if anything, did those men pick up on the way from that point to their working places to take to their working places?

A. Occasionally there might be a man that—a drill man might take in a drill needle or some small repair part for a drill.

Q. Where did he get it if he did do that?

A. Get it at the machine shop.

Q. Where was the machine shop?

A. Down near Number 1 mine.

Q. Where?

A. Down near Number 1 mine.

Q. Is that at the top?

A. Yes, sir, that is on the surface.

Q. That is on the surface?

A. Yes, sir.

Q. And—

A. And then there was—

Q. How big is a drill needle?

A. A drill needle is about a quarter of an inch in diameter, and about 16 inches long.

Q. How much would it weigh?

A. Oh, probably an ounce or two.

Q. Was that the rule—How often would the drill bit be taken into the working place?

A. There wasn't any drill bit—

Q. I mean the drill needle.

A. Oh, that happened very seldom, probably once a week.

Q. What was the method of sending those needles into the working places?

A. All supplies were sent in by the service crews.

Q. How were they sent in?

A. They were brought up to the mouth of the mine—

Q. By whom?

A. By a truck.

Q. By truck?

A. Yes, sir, and put on a car and sent in.

Q. Who did the work of taking them in the mine?

A. On this upper slope no one rode the cars. They were taken in by the hoist engine.

Q. Who took them in, who got them in the mine?

A. They were taken in by company chainers?

Q. By company chainers?

A. Yes, sir.

Q. On their time or the company's time?

A. Yes, sir.

Q. On the company's time?

A. Yes, sir.

Q. How often did it happen they took in a drill needle?

A. It didn't happen often.

Q. It didn't happen often?

A. No, sir.

Q. You say that was an unusual case, and they were taken in by other men working in other capacities for the company?

Mr. Harris:

We object. He has asked that twice, Judge.

The Court:

What is the size of those needles?

The Witness:

It is a little metal tube about a quarter of an inch in diameter, larger at one end than the other, and about 16 inches long.

The Court:

Weighing about how much?

The Witness:

Oh, I would say an ounce or two.

Q. Did the company pay the men who usually took those supplies in the mine? Did the company pay those men?

A. Yes, sir.

Q. Was it done on time for which the company paid?

A. Yes, sir.

Q. Now, after the men got off the man trip, the point from which you say they walked, did they get anything else on the way to their working places? For instance, I will take the question of powder.

A. A few of them did, not all of them. There would be possibly 15 men in the morning that would get powder.

Q. Well, I am taking each crew now?

A. Oh, there would be one man out of each crew.

Q. One man out of a crew?

A. That is right.

Q. Where was that powder kept and where did he get the power?

A. The powder was kept underground in an underground powder magazine located at approximately 62 left, I believe.

Q. That man would get off at 48?

A. Yes, sir.

Q. And he would go down to about 62?

A. Yes, sir.

Q. And that is where the powder house is?

A. Yes, sir.

Q. And you say one man out of each crew would get powder there?

A. Not every day. It wouldn't be necessary to get it each day.

Q. But when he got it, one man out of the crew would get it?

A. Yes, sir.

Q. Did you have a man there in charge of the powder house or the issuing of the powder?

A. Yes, sir.

Q. What time was that powder issued?

A. Oh, about 7 o'clock in the morning.

Q. About 7 o'clock?

A. Yes, sir.

Q. I will ask you, Mr. Harper, was it at any time or at some time issued before 7, or was it issued at 7, or what was the rule on that?

A. Well, he possibly might have opened up before 7 o'clock, and it took him 15 or 20 or 30 minutes to issue powder, and some of that time would go over 7 o'clock.

Q. So the powder was issued at or around 7 o'clock?

A. Right close to it.

Mr. Harris:

We object. He leads the witness to a different conclusion.

Mr. All:

Oh, no.

Q. What about the oil, Mr. Harper, the lubricating oil?

A. The oil was kept at 48 right in an oil house.

Q. In an oil house?

A. Yes, sir.

Q. Did you have a man in charge of that oil house?
A. No, we didn't.
Q. How was it kept?
A. A drum of 50 gallons of oil was taken in the mine on the man trip.
Q. By whom?
A. These company chainers.
Q. On the company's time?
A. Yes, sir.

The Court:
What do you call them; chainers?

The Witness:
Chainers.

The Court:
Were they service men?

The Witness:
Yes, sir.

Q. Were they service men?
A. Yes, sir.
Q. Did they take it down on company time?
A. Yes, sir.
Q. And then it was—
A. It was emptied into a tank and pumped out by anybody that wanted to get it.
Q. By anybody that wanted to get it?
A. Yes, sir.
Q. Now, these men getting the oil would get it in what sort of vessel?
A. In a regular standard one gallon can.
Q. One gallon can?
A. Yes, sir.
Q. The men would go there and pump it out?

A. Yes, sir.

Q. And one man would take it down?

A. Yes, sir.

Q. Now, how many members of a crew would do that when that was done?

A. One.

Q. You mean one man out of a service crew?

A. No,—

Q. You mean one man out of a production crew?

A. Yes, sir.

Q. Now, what time did that happen?

A. That would happen right after the man got off the slope man trip.

Q. That would happen before he got to a working place?

A. Yes, sir.

Q. You mean he would do that on his way down?

A. Yes, sir.

Q. Now what about the empty bucket he used?

A. It was customary for the man who got the oil to bring his empty can back with him in the afternoon and hide it somewhere around this oil house and pick it up the next morning.

Q. Now, what member of the crew would usually carry oil?

A. Usually the drill man.

Q. Usually the drill man?

A. Yes, sir.

Q. All right. Did you have any hangers and wedges and things of that sort for use in your operations?

A. Yes, sir, we did.

Q. Where were they usually kept?

A. There was a supply of them kept in a tool supply box at this 48 right yard, and usually some laying around the blacksmith shop on the surface.

Q. Where were the rest of them?

A. There were two or three in each working place.

Q. All right. What was the rule with respect to how the—that material got to the working places?

A. It was brought up from the blacksmith shop to the mouth of the mine and sent in on a trip.

Q. To what point?

A. 48 right.

Q. 48 right?

A. Yes, sir.

Q. Did the company deliver any of that—any of those things to the working places?

A. Practically all of them.

Q. I mean to the working places?

A. Practically all of them.

Q. Practically all of them delivered to the working places?

A. Yes, sir.

Q. By whom? By what men?

A. By these chainers who operated the trip.

Q. On the company's time?

A. Yes, sir.

Q. You stated some of them were kept at 48 left?

A. 48 right.

Q. Did any of the men in the production crews ever get any of them and take them down themselves?

A. Oh, yes.

Q. Under what circumstances?

A. Well, he might need one and pick it up and carry it with him to avoid the delay of waiting on this company chainer to deliver it later on.

Q. What was the size and weight of those wedges?

A. The wedge would be about five or six inches long, maybe two inches wide and about half an inch thick at one end, and taper down to a point.

Q. How much would that weigh?

A. Ten or twelve ounces. Maybe a pound.

Q. Maybe a pound?

A. Yes, sir.

Q. When the men did take those out, how did they take them?

A. In their pockets.

Q. Where were the hangers usually delivered by the company?

A. The same way.

Q. Where?

A. They were delivered to the knuck or working place.

Q. Did the men ever take a hanger to the working place?

A. Yes, sir, it has been done.

Q. It has been done?

A. Yes, sir.

Q. Well, was that frequent or infrequent?

A. Infrequent.

Q. Infrequent?

A. Yes, sir.

Q. What was the size of the hanger?

A. A hanger would be an inch and a half square at the big end, about 12 or 14 inches long, and flatten out at the other end, with a hole in it.

Q. How big—

A. It would weigh, I should say, about 5 or 6 or 7 pounds, maybe.

Q. Would you say the rule was that was delivered at the knuck or at the working place?

A. Yes, sir. All supplies were ordered either over the telephone or by word of mouth, and they would be brought to a man by these chainers who rode back and both on the trip.

Q. Delivered all the way to the working place?

A. Yes, sir.

Q. Now, where was this material or machinery the production men used kept between shifts or after the shift?

A. Left at their working places.

Q. Left at their working places?

A. Yes, sir.

Q. All right. What was done with the drills and the drags?

A. The drags were left—probably moved up to the next stope on the heading for the next shift.

Q. Why were they moved out?

A. The customary practice was to load in one stope while the drill men drilled in the one next to it.

Q. Was all the material moved out of a particular working place when shooting commenced?

A. Yes, sir.

Q. It was?

A. Out of the way of danger from the shooting.

Q. Now, Mr. Harper, did they have a regular time for shooting?

A. Yes, sir.

Q. What time did the—we are dealing here with the day shift. What time did the shooting commence?

A. 2:30.

Q. 2:30?

A. No, wait a minute. 3:30. I have gotten this coal working hours on my mine.

Q. That was some time before the work would stop?

A. Well, 2:30 was quitting time.

Q. 2:30?

A. I mean 3:30.

Q. 3:30 was quitting time?

A. Yes, sir.

Q. What time did the shooting commence?

A. The shooting commenced then.

Q. Who did the shooting?

A. The drill men.

Q. What did the other men do when the drill men began to shoot?

A. They left.

Q. They left, they got out of the headings?

A. Yes, sir.

Q. Was that the safe thing to do?
A. Yes.
Q. What did you say?
A. I said yes.
Q. That was one of the reasons they left, on account of safety?

Mr. Harris:
We object to that, if the Court please.

The Court:
I sustain it.

Mr. All:
We except.

Q. Now, did the company operate the same number of outcoming man trips that they did ingoing trips?
A. Yes, sir.
Q. And they started about when?
A. Possibly five minutes after quitting time. We had to take the regular ore trip off the rope, and put on the man trip. It would take about five minutes.
Q. About five minutes?
A. Yes, sir.
Q. And then they started?
A. Yes, sir.
Q. And you used the same trip?
A. Same cars.
Q. And they would come out in rotation,—come out in rotation until you got the men out?
A. Yes, sir.
Q. Is that right?
A. Yes, sir.
Q. Now, you left Sloss in 1938, Mr. Harper?
A. Yes, sir.

Q. Do you remember what time in—I mean 1933, wasn't it? I mean you left Sloss in 1938?

A. I left Sloss the first of June, '38.

Q. First of June, '38?

A. Yes, sir.

Q. Now, Mr. Harper, was the Sloss Company operating under a union contract when you got there in 1933?

A. No.

Q. It was not? Do you recollect when the union was organized, the ore miners?

A. In the summer of '33.

Q. Summer of '33?

A. Yes, sir.

Q. Do you remember what union that was?

A. International Union of Mine, Mill & Smelter Workers.

Q. Yes, sir. When did the company, to your knowledge, have any dealings with the union? Do you remember whether you did in 1933 or not?

A. My recollection is we had a few meetings with the mine committee in the fall and winter of '33.

Q. Did you enter into any agreement or contract with them, or any sort of working arrangement of any sort in 1933?

A. No.

Q. Did not?

A. No.

Q. But you did begin talking with them?

A. Yes.

Q. Did you personally talk to them?

A. Yes.

Q. Did they meet with you?

A. Yes.

Q. Now, in '34 did you have any dealings with them with respect to a contract or to an agreement?

A. Yes, we had meetings all through '34.

The Court:
What was your position at that time?

The Witness:
Superintendent.

The Court:
General superintendent of ore mines?

The Witness:
No, just superintendent, one mine.

Q. Now, Mr. Harper, do you—do you recollect this instrument which I hand you, which is directed to Sloss-Sheffield Steel & Iron Company, attention Mr. Marshall, Vice President, Bessemer, Alabama? It is dated Bessemer, Alabama, April 13, 1934.

A. Yes, sir, I remember it.

Q. What is that, Mr. Harper?

A. I would say it is a request by the union to enter into negotiations with—

Mr. Harris:
Has it got the date, Mr. All? If it has, it would speak for itself, instead of him explaining it.

Mr. All:
Let me read what it say:

"We, the duly chosen representatives of more than 90 percent of your employees, who were working for you on the 1st day of April, 1934, submit—"

Mr. Harris:
You are offering it in evidence now, are you?

Mr. All:
I am going to offer it.

Mr. Harris:
All right.

Mr. All:
—"the following demands in working agreements and wage scales."

A. Yes, sir.

Mr. Harris:
May I see it?

The Court:
Is that a similar instrument to what the Tennessee Company's witnesses called a proposal?

Mr. All:
Yes, sir.

Mr. Burr:
I don't know whether it is exactly the same. It is the same, I take it.

The Court:
It is a proposal?

Mr. Burr:
Yes, sir.

The Court:
I don't know whether it would be the same.

Mr. Burr:
Probably is the same,—I don't know.

The Court:
That was in 1934?

Mr. All:
Yes, sir.

The Witness:
Yes, sir.

Mr. All:
1934, April 13th.

Mr. Burr:
Let me see that, just a minute.

Mr. All:
Now, we offer that in evidence as—

The Clerk:
Sloss Exhibit Number 1.

Mr. All:
Sloss Exhibit Number 1.

The Court:
Have you seen it?

Mr. Harris:
Yes, sir.

Mr. Burr:
Just a minute. It seems to be an exact copy of the Tennessee Company proposal.

Mr. Harris:
I imagine they are the same.

Mr. All:
What they did was submit identical copies to each of the four companies.

Mr. Burr:
They can put it in and we can eliminate it later.

The Court:
Just let it be introduced.

Mr. All:
We might be able to agree on that later and eliminate it if that is a fact.

Mr. Burr:
Let it go in.

Mr. All:
Let it go in as Sloss Exhibit Number 1, and we will substitute a copy.

The Court:
Is it all right to substitute a copy?

Mr. Harris:
Yes, sir, with the understanding—

The Court:
It will be compared later?

Mr. Harris:
Yes, sir. Of course, I am not objecting because I have, as I understand, my objection to everything prior to 1938.

The Court:
Yes, sir.

(Thereupon the said document, being dated Bessemer, Alabama, April 13, 1934, and addressed to Sloss-Sheffield Steel & Iron Company, Attention, Mr. Marshall, Vice President, and entitled "In re: Sloss Mines Division, Bessemer," and signed John Hill, was marked Sloss Exhibit No. 1.)

Q. Now, Mr. Harper, did you discuss this proposal with the Union Committee or with a committee representing the union?

A. I did, but my recollection is that copy there went into the Birmingham office.

Q. You mean this copy went in to the Birmingham office, but I mean did you discuss the subject matter in a meeting with the representatives of the Union?

A. Yes, sir, I did.

Q. You did?

A. Yes, sir.

Q. Now, I will ask you if any discussion was had of these demands in which the question of traveling time or the method of computing work time as face to face or—

The Court:

Doesn't that speak for itself?

Mr. All:

I think it does, but I want to call attention to the fact and read for the record that this proposal contains the following item:

"Eighth: In view of the fact that the company can force the men to enter and leave the mines at any time stated by the company, we ask the right to enter on our own time and leave on the company's time."

That is just the same as the other proposals were.

Q. Mr. Harper, who represented the Union in your discussions with them of those proposals?

A. They had a regular mine committee.

Q. Do you remember who was present representing the miners?

A. Oh, we had a number of meetings. Mr. John Hill was present at most of them, Mr. O'Neal, Jessee Gaines. At one meeting there was a Mr. Finch present.

Q. Do you remember whether that was the meeting of April 13, 1934, whether you had a meeting with them on April 13, 1934?

A. I believe that is right.

Q. '34?

A. Yes, sir.

Q. Mr. Virgil C. Finch?

A. Yes, sir.

Q. What organization did he belong to?

A. He told me that he represented the American Federation of Labor.

Q. Was there any mention made in that meeting of the question of the face to face working basis or the face to face method of computing work time?

A. Yes, there was.

Q. Could you tell us briefly what was said about that?

A. Mr. Finch acted as chairman of the committee, and he brought that up as one of his requests, that the men—he made this statement: That we were only paying the men for eight hours time, and we were keeping them in the mine around nine and a half hours.

Q. Did you reply to that?

A. Yes, I did.

Q. What reply did you make to it?

A. I told him we couldn't grant it.

Q. What else did you say, if anything?

A. I told him it had never been heard of before here, and nobody else was doing it and had never been done before and we couldn't do it.

Q. Now, did anything come of that matter?

A. No.

Q. Now, what happened later, Mr Harper, during that year?

A. In May of that year we had a strike.

Q. Had a strike? Do you remember that strike was May 4th? Just to refresh your recollection, did the men go out on May 4th?

A. I believe that is the right date.

Q. All right. Now Mr. Harper, what demands were being made at the time the strike occurred?

Mr. Harris:

We—That question is so general, Judge, that we—

The Court:

I think so too, Mr. All.

Q. Did they assign a reason for the strike?

Mr. Harris:

I object to that. I don't see that the reasons for the strike are material. We are not going into the strike.

The Court:

You might—I think you ought to confine it to if demands were made, what peculiar demands were made.

Q. I will ask it this way: Was this matter of transportation time or traveling time the cause of the strike?

A. No.

Mr. Harris:

That calls for a conclusion. He summarizes everything as the cause of the strike.

Q. Did the Union committee present that as a reason for the strike?

A. No.

Q. Now, what happened after the strike, Mr. Harper?
A. With regard to what?
Q. I mean with respect to the men going back to work.
A. You mean during the strike?
Q. During the strike.
A. Well, we—

Mr. Harris:
I don't understand the question. He asked what happened—

Q. What other negotiations took place after the strike, if anything?

Mr. Harris:
I would like to know who they negotiated with.

Mr. All:
I can't lead him. I am going to ask him, and with whom.

The Court:
Were the negotiations taken up after the strike?

Mr. All:
I didn't want to lead, Judge.

Q. Were the negotiations—was that a general strike?
A. Yes, sir.
Q. All the miners on Red Mountain struck?
A. Yes, sir.
Q. Do you know when negotiations began looking to a reopening of the mines?
A. There were none I know of until a meeting held in Birmingham along the latter part of May, sometime, between the company officials and the mine committee, and I think Mr.—With General Persons acting as chairman of the meeting.

Q. That is General Persons here of the First National Bank?

A. Yes.

Q. Did you attend that meeting, Mr. Harper?

A. Yes, sir.

Q. Where was it held?

A. In the Webb Crawford Building.

Q. Was the question of traveling time brought up at that meeting?

A. I don't recall that it was.

Q. Did anything come of that meeting directly?

Mr. Harris:

We object to that form of question,—did anything come of the meeting. That is a bald conclusion, Judge.

The Court:

I think it is a conclusion.

Q. Well, did they settle the strike at that meeting?

Mr. Harris:

That is a conclusion, if the Court please.

Q. Well, did the men go back to work immediately after that meeting?

A. No.

Q. Was it agreed at that meeting the men would go back to work?

A. No.

Q. Well, what happened next, Mr. Harper, that you recollect?

A. I don't know of anything until a Mr. Richardson came to this district representing the Department of Labor, and had some meetings which finally resulted in a settlement of the strike.

Q. Resulted in a settlement of the strike?

A. Yes, sir.

Q. Now, how was that evidenced?

A. There was a meeting held in the general offices of the Sloss Company, is my understanding.

Mr. Harris:

Weren't you there?

The Witness:

No, I wasn't there.

Mr. Harris:

Well, we object to all that, if the Court pleases.

The Court:

That would be hearsay.

Q. They held some meetings when Mr. Richardson came here?

A. Yes, sir.

Q. Do you recollect whether or not there was a letter of understanding written by the company to Mr. Richardson?

Mr. Harris:

We object unless he knows something about it or helped write it or was present when it was written.

They evidently have somebody that could testify first hand.

The Court:

Do you know about it, Mr. Harper?

The Witness:

Yes, sir, I know about it.

Q. I will ask you if this is a letter on behalf of the company to Mr. Richardson?

A. Yes, that is a copy of it.

Q. Now, Mr. Harper, do you recollect whether there was an increase of wages given at that time?

A. There were some adjustments made, yes.

Q. Do you remember whether it involved an increase in wages?

A. Yes, sir.

Mr. All:

I want to introduce this instrument—

The Clerk:

It will be Sloss Exhibit Number 2.

Mr. All:

—as Sloss Exhibit Number 2.

Mr. Harris:

Well, specifically, we object, in addition to the usual objection, on the ground that this letter appears to have been written by a man named R. M. Marshall, Vice President and General Manager, and Mr. Marshall would be the proper one to identify the letter.

This witness wasn't present when it was written; he doesn't know it was mailed; he didn't see it mailed; he didn't have anything to do with the mailing of it; All he knows, he has heard general rumor or report a letter was written.

Mr. All:

Now, if the Court please, I don't—It is not necessary for this witness to have written this letter or for him to have been there when it was written. That is the letter that we have, and it is the copy of a letter that was writ-

ten to Mr. Richardson, the original of which they have, and the Union knows about it.

Mr. Bronaugh:
It is not denied—

Mr. All:
It is not denied—

Mr. Bronaugh:
What is his point?

Mr. All:
If it were denied that letter had been written, that would be a different proposition. They went back to work when that letter was written.

Q. Mr. Harper, when did they go back to work?

The Court:
He has not identified the letter.

Mr. All:
I think he has.

Mr. Harris:
There are certain rules of evidence that have grown up over the years in common law Courts, and American Courts that are not common law, and it is a protect measure that a witness should only be allowed to testify to that which they do know, and this witness doesn't know, and they can lay the predicate and put on witnesses who had the information, but just to bring a man in here and give us his conclusion,—if they keep on going as they have started with this witness, we will wind up without any rules of evidence at all.

The Court:
I will sustain the objection.

Mr. All:
We except.

Q. Mr. Harper, have you seen this letter?
A. I have seen a copy of it.
Q. Have you seen that copy of it?
A. Yes, sir.
Q. When did the men go back to work?
A. July 10th.
Q. July 10th?
A. Yes, sir.
Q. Did they go back to work practically immediately after this letter was written?

Mr. Harris:
That is a conclusion, Judge.

The Court:
I don't think that proves the execution of it at all.

Mr. Burr:
Why don't you demand the original.

Mr. All:
I would like to demand the original.

The Court:
Did you see the original of that executed?

The Witness:
No, sir, I did not.

Mr. All:
Have you the original of this letter? Do you know that letter was written?

I don't want to make an issue of this unless they deny the letter was written.

Mr. Harris:
It is not a question of denying. It is a question of putting on evidence. He can't come to me and say what part of this case will you agree on—

The Court:
I will sustain the objection.

Mr. All:
We except.

Q. Now, Mr. Harper, when the men went back to work, as you say, on July 10th, how were they paid when they went back with respect to travel time and face to face—

Mr. Harris:
We object to that, if the Court please.

The Court:
Overruled.

A. There was no change made.

Q. No change made in the method of computing time on face to face?

A. No.

Q. Now, when, Mr. Harper, was the next negotiation or the next meeting with the men or the union with respect to a change in or another arrangement for an agreement for the men to work?

A. The next year, '35.

Q. The next year, in 1935?

A. Yes, sir.

Mr. Harris:
May I see that?

(Mr. All hands paper to Mr. Harris.)

Mr. Harris:
May I show it to them?

Mr. All:
Yes, sir.

The Court:
We will take a few minutes recess.

Mr. Harris:
The reason we are taking so much time, Judge, that is an unsigned document.

The Court:
I imagine the men want a recess anyway.

Mr. Harris:
All right.

(Thereupon proceedings were in recess from 10:25 A. M., to 10:45 A. M., when proceedings were resumed as follows:)

The Court:
Go ahead.

Mr. All:
All right.

Q. Mr. Harper, have you—can you identify that as the Union's proposal in the year 1935?

Mr. Harris:
Now, I wish Mr. All would quit leading him. He said—

Mr. All:
Well, I—

Mr. Harris:
—"Will you identify it as the Union proposal?"

Mr. All:
I didn't mean to lead him.

Mr. Harris:
It is unsigned.

Mr. All:
I didn't mean to lead him.

Q. What is that, Mr. Harper?

Mr. Harris:
It speaks for itself. I object to him saying what that is.

Q. Did you see it, Mr. Harper?
A. Yes, sir.
Q. What is this?

Mr. Harris:
We object; it is a written memorandum.

The Court:
Sustained.

Q. What was the occasion of you seeing it?

Mr. Harris:
We object; it is immaterial when he saw it.

The Court:
I will overrule the objection.

A. That was presented by the Union to the company as an outline for a proposed contract.
Q. Proposed contract?
A. Yes.

Mr. All:
I want to identify this as Sloss Exhibit Number—

The Clerk:
Two.

Mr. Burr:
I thought 2 was the one you offered before that.

The Clerk:
It wasn't marked for identification. I will take it and mark it for identification.

Mr. All:
We will give you a copy of it.

The Court:
This will be Exhibit Number 3?

The Clerk:
Three. The other will be Number 2 for identification.

(Thereupon a document dated July 7, 1934, addressed "Commissioner C. L. Richardson, Representative of Secretary of Labor, United States Department of Labor, Birmingham, Alabama," and signed "R. M. Marshall, Vice

President and General Manager," consisting of two pages, and attached to which were three pages, the first entitled, "Insides rates," the second, "Outside rates," and the third, "Hand loading entries," was marked for identification Sloss Exhibit Number 2.)

(Thereupon, a document consisting of three pages, and beginning, "This agreement made and entered into by and between the Sloss-Sheffield Steel & Iron Company, hereinafter called the company, and the Sloss Local Union Number 109, International Union of Mine, Mill & Smelter Workers, hereinafter called the local," and ending, "In witness whereof, the parties hereto have executed this agreement on the .... day of ....., 1935," was marked Sloss Exhibit No. 3.)

Q. Do you remember about when this was presented, Mr. Harper?

A. About June, I would say, 1935.

Q. June, '35?

A. Yes, sir.

Mr. All:

Now, I want to read this into the record, if the Court please. Section 11 of this proposal for agreement—

Mr. Harris:

I don't think he has laid a proper predicate for its introduction in evidence.

Mr. All:

I offered it in evidence as Sloss Exhibit Number 3.

Mr. Harris:

There has been no proper predicate laid. This man hasn't said it was presented to him or by whom it was presented, or anything else.

The Court:
Well, he identifies it as the proposal.

Mr. Harris:
Yes, sir, but he doesn't say who presented it or to whom they presented it.

I am not being technical, but it is important to us to know what person received and what person presented it if he is going into this thing.

The Court:
Go ahead, Mr. All, and qualify it.

Q. Do you know to whom that was presented, Mr. Harper, and what was done with it after it was presented?
A. I was given a copy of it at the mine, and it was—
Q. By whom?
A. By the committee.
Q. What committee: Who composed that committee?
A. Mr. Hill and Mr. O'Neal.
Q. Who else, if you remember?
A. I don't recall—

The Court:
Well, who were they?

The Witness:
They were on the mine committee, Sloss ore mine committee.

Q. Sloss ore mine committee? That was for the union?
A. Yes.
Q. Union committee?
A. Yes, sir.
Q. What did you do with the copy?
A. I think I kept it. There was also a copy went in to the general office.

Q. Went in to the general office?
A. Yes, sir.

The Court:
And that is a copy?

The Witness:
This is a copy.

Mr. All:
I offer this in evidence—

The Court:
All right.

Mr. All:
—if the Court please, as Sloss Exhibit Number 3, and I want to substitute a copy.

I want to call attention to two sections of that, if the Court please, just for facility in later consideration. I call attention to section or paragraph 11.

"It is agreed that the employees shall enter the mines on their own time and come out of the mines on the company's time."

They proposed that.
You have a copy then, have you, Mr. Clerk?

The Clerk:
Yes, I have a copy.

Mr. Harris:
Will you mark this original so we will know what it is we are comparing?

The Clerk:

Yes, sir. I am marking the original and substituting a copy. They will keep the original.

Mr. Harris:

Yes, sir, but we want to compare all documents.

(By Mr. All):

Q. Mr. Harper, did you afterwards have any meeting with any committee representing the union or any committee representing the miners after that proposal was made?

A. Yes, sir, I did.

Q. All right, sir. Can you tell me who was present as representing the union?

A. The meetings we had down at the Sloss mines at which I was present, the regular union committee was present also.

Q. Did you have any meetings yourself with Mr. Horn, the president of District Number 5?

A. Yes, sir.

Q. Or were you present at any meetings at that time?

A. Yes, sir.

Q. Who else—are those the meetings you spoke of?

A. Yes.

Q. Who else—who was present with Mr. Horn?

A. The mine committee.

Q. Who was—just name those, if you don't mine.

A. Mr. Hill, Mr. O'Neal, Jesse Gaines.

Q. Do you remember Sam Knox, to refresh your recollection?

A. Yes.

Q. Do you remember whether he was present at any of the times?

A. Yes, he was present at some of the meetings.

Q. Do you recollect whether you made a contract with them for 1935?

A. No, we didn't make a formal contract.

Q. Didn't make a formal contract? Do you remember how the negotiations closed?

A. They closed with a meeting in the general offices with Mr. Marshall, Mr. Davis and—

Q. Who was—

A. —it was agreed—this is my understanding, that it was agreed—

Mr. Harris:
Was he there?

The Witness:
No, I was not present at that meeting.

Mr. Harris:
Judge, will you instruct this man not to tell about meetings he didn't attend?

The Court:
You were not there?

The Witness:
No.

The Court:
Don't testify to anything you don't know. If you don't know of your own knowledge, don't testify to it.

Q. Do you know whether any contracts were made—did you know when contracts were made, or did you have—if memoranda of agreements were made, did you, as superintendent of the mine, get that information?

A. Yes, sir.

Q. Get whatever information there was?

A. Yes, sir.

Q. Do you recollect whether or not there was any contract for that year,—in that year?

A. There was no contract made.

Q. Do you remember what arrangement was made for a continuation of work following this proposal?

A. Yes.

Q. What was that?

A. The first step was the posting of a notice which confirmed the company's agreement or willingness to continue the present agreement—

Mr. Harris:

The notice would be the best evidence, if the Court pleases.

The Court:

Well, if he knows there was a posted notice—

Mr. Harris:

I didn't object to that, but I think the notice would be the best evidence of its contents.

Q. Did you post the notice yourself?

A. Yes, sir.

The Court:

Of course, the notice would be the best evidence of its contents, but you posted the notice?

The Witness:

Yes, sir.

Q. You signed the notice?

A. I did.

Q. I will ask you if the matter of negotiations was closed with that notice and with that instrument?

A. Yes, sir, this letter closed it.

Q. For that year?
A. For that year.
Q. All right, sir.

Mr. All:
Now, Crampton, I want you to look at this. (Handing paper to Mr. Harris.)

Mr. All:
If the Court please, may I read this?

Mr. Harris:
You are going to offer it in evidence?

Mr. All:
I am going to offer it in evidence, and then I want to re-offer the other one.

It is dated August 4, 1935, and addressed to Mr. A. E. Horn, President, District Number 5, Mr. John Hill, Representative of Sloss Ore Employees, Mr. W. A. O'Neal, Representative of Sloss Ore Employees, and Mr. Sam Knox, Representative of Sloss Ore Employees.

"Gentlemen: Confirming statements made to you in conference with Mr. A. F. Harper and Mr. Osborne on August 3, 1935 relative to the notice given to you and posted at Sloss Mine on July 6, 1935. This notice reads as follows:

"'The present hourly tonnage and yardage rates and working conditions will be continued in effect until further notice." Signed: A. F. Harper, Superintendent.'

"Hours and rates of pay paid on this date for all classes of work will be continued in effect until further notice.

"Working conditions includes the letter of understanding under date of July 7, 1934, written by the Sloss Company to Mr. C. L. Richardson, Representative of Secretary of Labor. All provisions of this understanding will be continued in effect until such time as this arrangement is no longer practicable."

I want to call your attention to the fact that that is the letter identified as Sloss Exhibit Number 2,—that letter of July 7th.

The Court:
The letter referred to?

Mr. All:
The letter referred to here for 1935 refers to the other letter.

The Court:
Well, is that a copy of that letter?

Mr. All:
No, sir; this is not a copy of the letter.

The Court:
I mean letter Number 2, is that a copy—

Mr. All:
It is our copy. The original was sent to Mr. Richardson. You see what I am driving at—

The Court:
Yes, sir, I see.

Mr. All:
The letter referred to in this is the letter referred to by Mr. Harper.

The Court:
Written by Mr. Harper?

Mr. All:
No, sir, this was not written by Mr. Harper, but the letter referred to as containing the understanding is the other letter which I sought to introduce for 1934.

The Court:
All right.

Mr. All:
Now, I want to offer—make that—

The Clerk:
Sloss Number 4.

(Thereupon the letter dated August 4, 1935, addressed to Mr. A. E. Horn, Vice President, District Number 5, and Mr. John Hill, Mr. W. A. O'Neal and Mr. Sam Knox, Representatives of Sloss Ore Employees, was marked Sloss Exhibit No. 4.)

The Court:
Who prepared that?

Mr. All:
Mr. Davis signed that letter.

The Court:
But Mr. Harper's name is referred to in here as the one who negotiated it?

Mr. All:
Yes, sir, and he posted the notice.

The Court:
Posted the notice?

Mr. All:
Yes, sir.

Now, I want to re-offer the letter I offered as Sloss Exhibit Number 2, being the letter prepared by the Sloss Company and signed by Mr. R. M. Marshall to the Department of Labor. I want to re-offer that as Exhibit Number 2.

Mr. Harris:
I don't think that is a sufficient predicate, if the Court please.

Mr. All:
I want to substitute this copy.

Mr. Harris:
We renew our objection.

The Court:
That exhibit Number 2 is a copy. There is no signature on it. No one identifies it as the instrument that was executed.

Mr. All:
All right, sir. Now, I am making a demand on these gentlemen to know whether or not they received that letter. I am making a demand for the original letter. I make the demand on the Union and Mr. Hill over there particularly for that Richardson letters.

Mr. Harris:
Well, I understood the original was addressed to a man named Richardson.

Mr. Bronaugh:
You got a copy of it, though, Mr. Harris—

Mr. Harris:
There is no evidence whether a copy was mailed to us or not.

Mr. Bronaugh:
That is what we are asking you to tell us.

Mr. All:
I want you to find out whether you got a copy.

Mr. Harris:
I will find out during the noon hour, and if they got a copy I will tell you.

Mr. All:
You might also ascertain whether they received this last one referred to here.

Now, you have the substitute copy, haven't you?

The Clerk:
Yes, sir, I have the substitute copy.

Q. Now, after that letter was written, Mr. Harper, will you tell me how the men worked from that point on with respect to the computation of working time on face to face, whether there was any change made in it?
A. There was no change.
Q. You continued the computation of work time on face to face?

Mr. Harris:
We object; it is leading.

Mr. All:
That is just former testimony.

The Court:
It is leading and it is just repetition. It is repeating.

Q. Now, Mr. Harper, I hand you two papers—

Mr. Harris:
May I see those two, please, sir?

(Thereupon Mr. All handed papers to Mr. Harris.)

Mr. Harris:
I think we might—

Mr. All:
There may be some pencil memorandum on there that probably don't belong on there.

Mr. Harris:
Yes, I see one on the firstline.

Mr. All:
That is probably a correction and a proper correction.

The Court:
Mr. All, I didn't admit Exhibit 2. I don't know whether you understood that.

Mr. All:
I understood—

The Court:
I sustained the objection.

Mr. All:
On my re-offer to introduce?

The Court:
Yes, sir.

Mr. All:
Well, we take an exception.

The Court:
I don't think there is any showing that it was ever executed. There is nothing to show, it being a copy, it was ever executed.

Mr. All:
I just strike what I have just said, and I want to make another offer.

I want to introduce here a letter to Mr. Ben. Davis, General Manager of Sloss Company, signed by A. E. Horn, President, copy to the United States Department of Labor and the State Department of Labor, dated May 5, 1936, to Mr. Davis, and I will ask Mr. Harper if he saw that letter.

Mr. Harris:
Well, is Mr. Davis alive?

Mr. All:
We can't examine but one witness at a time, Mr. Harris.

Mr. Harris:
I know, but here is a letter addressed to a man named Davis and you are proving by a man named Harper he saw it.

The Court:
The fact he saw it is no evidence of execution.

Mr. Burr:
It is signed by the president of the union.

The Court:
It is signed by the president of the Union?

Mr. All:
I am making a demand on them for the original letter. It is a letter to the Sloss Company, who received it.

The Court:
Who is it addressed to?

Mr. All:
Mr. Ben Davis.

The Court:
Is he available?

Mr. All:
Yes, sir. It was in the Sloss file.

I want to ask this witness if it came to his attention.

The Witness:
Yes, sir, I have seen it.

Mr. All:
I want to offer it in evidence, if the Court please.

Mr. Harris:
I object.

The Court:
Sustained.

The Clerk:
Do you want to offer it for identification?

Mr. All:
Yes, sir.

The Clerk:
Sloss Exhibit Number 5 for identification.

(Thereupon the document dated May 5, 1936, addressed to Mr. Ben Davis, General Manager, Sloss-Sheffield Steel & Iron Company, Birmingham, Alabama, and signed A. E. Horn, President, was marked for identification, Sloss Exhibit No. 5.)

Mr. Burr:
Did you call attention it was signed by the President of the district?

Mr. All:
I call attention to the fact it is signed by the president of the district—

Mr. Burr:
And on the district's stationery.

Mr. All:
And on the district's stationery.

Mr. Harris:
He can't prove it that way, if the Court please.

The Court:
I think not.

Mr. All:
I want to offer Mr. Davis' reply—

Mr. Harris:
This is just a blank document, Judge.

The Court:
I sustain the objection.

Mr. All:
I want to make a demand on—

Mr. Bronaugh:
Just identify it first and go on.

Mr. All:
I want to identify it as the next exhibit.

The Clerk:
Six.

(Thereupon a document dated May 8, 1936, addressed to Mr. A. E. Horn, President, International Union of Mine, Mill & Smelter Workers, District Number 5, Bessemer, Alabama, was marked for identification, Sloss Exhibit No. 6.)

Mr. All:
That purports to be a carbon copy, if the Court please. We are substituting a copy for that.

Have you all looked over this? Is there any objection to this?

Mr. Harris:
That little old interlineation up on top there—This seems to be addressed to Mr. Harper. Of course, all the objections and so forth don't apply to that, the predicate and so on, if the Court please, because it is addressed to Mr. Harper.

Mr. All:
Let me call your attention to this, Mr. Harris. We have got this other letter in. This says, "On June 24, 1936."

This—those other letters were written on July 7th and this purports to be a correction of that erroneous date.

Mr. Harris:
That doesn't matter.

Mr. All:
I want to put that in as the next exhibit number.

Mr. Harris:
You have some marks on this—I don't know what this means.

Mr. All:
They don't mean anything. The copies haven't got those marks on them.

Mr. Harris:
I don't object to that on the predicate theory, but the original objection goes entirely through the case. I don't object on the predicate theory.

The Court:
You mean prior to 1938?

Mr. Harris:
Yes, sir.

The Court:
Overruled.

Q. Mr. Harper, I am showing you two instruments, which we will identify as Exhibit Number—

The Clerk:
Be Sloss Exhibit Number 7.

(Thereupon a document on the stationery of District Five, International Union of Mine, Mill & Smelter Workers, dated May 26, 1936, addressed to Mr. A. F. Harper, Superintendent, Sloss Mines Division, Sloss-Sheffield Steel & Iron Company, Bessemer, Alabama, and signed A. E. Horn, President District Number 5, International Union of Mine, Mill & Smelter Workers, to which is attached an unexecuted form of agreement entitled, "Working Agreement between the Sloss-Sheffield Steel & Iron Company and their Employees, Members of the International Union of Mine, Mill & Smelter Workers," was marked "Sloss Exhibit No. 7.")

Q. —Sloss Exhibit Number 7, consisting of a letter addressed to you with an instrument attached. I will ask you if you received that letter and that instrument?

A. I received that.

Q. All right, sir. Did you receive that?

A. Yes, sir.

Mr. All:

We mark—

The Court:

That is Exhibit 7?

The Clerk:

Exhibit 7.

Mr. All:

Exhibit 7 consists of the letter and the instrument.

The Court:

What is that letter, Mr. All?

Mr. All:

It is a letter—the letter encloses a copy of a proposed agreement, and it has one or two other features to which

I will call Your Honor's attention. The date of the letter is May 26, 1935.

The Court:
May?

Mr. Harris:
No,—

Mr. All:
May 26,—

Mr. Harris:
No, no.

Mr. All:
No, May 26, 1936, is the date of the letter.

Mr. Burr:
Who is that letter signed by?

Mr. All:
The letter is addressed to Mr. Harper, Superintendent, Sloss Mines Division, Bessemer, Alabama, and is signed by Mr. A. E. Horn, President of District Number Five of the International Union of Mine, Mill & Smelter Workers, I want to call particular attention to this part of the agreement—

The Court:
Paragraph?

Mr. All:
The paragraphs are not numbered, but it is under the heading of "Maximum Hours", and this is the way that reads:

"An eight-hour day and five-day week, (forty hours per week) shall prevail, exclusive of the 30-minute lunch period, with option to run through without suspension, if agreed to between the company and the mine committee."

Mind, this is a proposed agreement.

"The eight-hour day means eight hours in or about the mines, at the usual working places for all classes of work, (other than those excepted from this agreement)".

And a reading of the agreement will show it does not except the underground employees.

The Court:
What page is that on?

Mr. All:
This is on page 3. What we have just read is at the bottom of page 2 and the top of page 3 of the proposal.

Mr. Harris:
The copies are not paged the same.

Mr. Bronaugh:
The copy you will have will be. Page 3, Judge.

Mr. All:
Page 3 on the copies.

The Court:
All right.

Mr. All:
Substitute that.

Q. Mr. Harper, was a contract later executed?

A. Yes, sir.

Q. Do you recollect the date of the contract?

A. I don't recall the exact date.

Q. Was there some intermediate discussion between then and the date of the contract?

A. Yes.

Q. Did you participate in some or all of those negotiations?

A. Some.

Q. Some, and you don't remember the date of the execution of the final contract?

A. No, I don't.

Mr. Harris:

May I see that, Mr. All?

(Thereupon Mr. All handed a paper to Mr. Harris.)

Mr. Harris:

Mr. All, I call your attention to the fact you have been talking to the witness about union negotiations and union representatives, and this instrument that I am looking at does not purport to be signed by any representative of any union whatever. It has got a heading, "Employees' Representatives".

Mr. All:

Well, whatever it is; it doesn't make any difference.

Mr. Harris:

It is apparently not a union contract at all.

Mr. All:

I am not introducing it—I am introducing it as a contract.

Mr. Harris:
We object to it as a contract. Of course, the thing would speak for itself, whatever it is.

Mr. All:
Well, whatever it is; that is all right.

The Court:
You mean the instrument has no kind of—

Mr. All:
Oh, yes. He is just—here is the instrument.

(Mr. All hands paper to the Court.)

Mr. Harris:
No,—

Mr. All:
I think we will not have any trouble showing that was the union committee. I don't imagine we will have.

Mr. Burr:
It doesn't make any difference.

Mr. All:
It doesn't make any difference.

The Court:
That is true.

Mr. Burr:
If it is any of your employees, it is evidence.

The Court:
Employee representatives.

Mr. All:
Yes, sir.

The Court:
And they signed themselves under it as such?

Mr. Harris:
I just called your honor's attention and his attention to the fact he has been talking to this witness about union contracts and so forth, and this doesn't purport to be a union contract.

Mr. All:
Well, I don't think—I am not going to argue with him on that. It doesn't make any difference—

The Court:
It hasn't been shown all the employees belong to the union.

Mr. All:
Oh, no.

Mr. Bronaugh:
The only thing, the exhibit prior to this was the proposed contract sent in by the International Union of Mine, Mill & Smelter Workers, and the contract was later signed. Whether that was a union or not, we are not arguing with Mr. Harris. It was the only contract we had with the employees this year.

The Court:
He has been discussion union negotiations.

Mr. Harris:
Yes, sir. Union negotiations, and the document,—look at it,—doesn't purport to be a contract between the union,

but when looked at appears to be a contract between some employee representatives.

The Court:
Mr. All, I think it would be up to you to show who these representatives were.

Q. Mr. Harper, were these representatives of the employees?

The Court:
Were they union employees?

Q. Read those employees off there, Mr. Harper.

The Court:
Is there anything in the heading of the instrument, in the preamble—

Mr. All:
"This is to confirm the understandings reached at conference between representatives of employees of our Red Ore Mine and the management, regarding the position of this company as to its Red Ore Mining operations."
And the testimony is this followed the conference in which these gentlemen, this District Number 5, represented by Mr. Horn, and those gentlemen, sat in—

Mr. Harris:
We—

Mr. All:
And signed by the committee.

We just want to introduce the contract for what it is worth.

The Clerk:
Be Sloss Exhibit Number 8.

Mr. All:
It will be Sloss Exhibit Number 8.

The Court:
It is admitted.

(Thereupon a document headed "Sloss-Sheffield Steel & Iron Company, Birmingham, Alabama," and directed "To the Employees of Sloss Red Ore Mine," and containing seventeen numbered paragraphs, and signed "Sloss-Sheffield Steel & Iron Company, Ben Davis, and Employees Representatives John Hill; Jesse Gaines, W. A. O'Neal and W. H. Gunter, and dated July 21, 1936, attached to which were sheets headed as follows, one sheet headed, "Outside Rates", one sheet headed "Inside Rates," one sheet headed, "Hand Loading Entries 18 Feet or Less in Width", one sheet headed "Entry Yardage Rates", one sheet headed "Hand Loading Entries or Stopes Over 18 Feet in Width," and one sheet headed "Drag Loading", was marked Sloss Exhibit No. 8.)

Mr. All:
You have got the substitute copy?

The Clerk:
Yes, sir.

Q. Mr. Harper, did the company and the men pursue their business under this contract—

Mr. Harris:
We—

Q. That has just been introduced, under that agreement?

Mr. Harris:

We object to that if the Court please. He can tell what they did. It is a conclusion whether they pursued it under that contract. It calls for a mental operation of the men and a mental operation of the company, if the Court please.

The Court:

Sustain the objection.

Mr. All:

All right.

Q. Mr. Harper, these men, the same men that met you, —I will as you whether or not those men are the same men that met you as the members of the Smelters Committee on several former occasions?

A. Yes, sir.

Q. And what did you mean by Smelters Committee when you answered that question that way?

A. That was the union.

Q. And these were the same identical men?

A. Same men.

Q. Well, after—did the company continue or not to work on the face to face method of computing work time—

Mr. Harris:

We object—

Q. —after that contract?

Mr. Harris:

We object to that if the Court please, because it calls for a conclusion, and when all the evidence is in Your Honor will see that has nothing to do with it.

The Court:
Well, he asks the question—

Mr. Harris:
We object on the ground it is—

The Court:
—that those that were working, did they continue to work on the face to face basis.

Mr. Harris:
We object as calling—

The Court:
Is that subsequent to the execution of this paper?

Mr. All:
Yes, sir.

Mr. Harris:
We object.

The Court:
I overrule the objection.

Q. Did the company pay—what was the answer to that?
A. There was still no change.
Q. Still no change?
A. We worked on a face to face basis.
Q. Did you work on a face to face basis with respect to all your employees?
A. Yes, sir.
Q. With respect to the service crews and production crews?
A. Yes, sir.

Mr. All:

Now, I want to read into the record and call the Court's particular attention to Section 11 (a) on what is marked Sheet 2 of that—

The Court:

The service crews, do you mean to answer they worked from face to face?

Mr. All:

No, sir.

The Court:

You said face to face.

Mr. All:

I mean working place to working place. That distinction is drawn all the way through here.

The Court:

What are you speaking of?

Mr. All:

The service crews worked on the working place to working place basis, and the production crews on the face to face basis.

The Court:

All right.

Mr. All:

I want to read in the record paragraph 11 (a). It is on page 2 of this contract.

The Court:

Is that Exhibit Number—

Mr. All:

Exhibit Number 8.

"An eight-hour day and five days per week per employee shall prevail, exclusive of the lunch period. The eight-hour day means eight hours of work in the usual working places, exclusive of the lunch period."

That is in this executed contract.

The Court:

That is paragraph—

Mr. All:

That is Paragraph 11 (a). It is on what is called sheet 2 or page 2 of that contract.

Have you a substitute copy there?

Mr. Bronaugh:

Yes, sir.

Mr. Harris:

Let me see that.

(Mr. All hands paper to Mr. Harris.)

Q. Now, after that contract in 1936 when were the next meetings had looking towards another arrangement or a new contract?

A. In the summer of '37.

Q. In the summer of '37?

A. Yes, sir.

Q. Now, do you recollect—you say the negotiations commenced in the summer of 1937?

A. Yes, sir.

Q. Now, who was present as representing the company at those meetings?

A. Mr. Roy Ratliff and Mr. Costner and myself.

Q. All three of you?

A. Yes, sir.

Q. What gentlemen—

The Court:

Who were they?

The Witness:

Mr. Ratliff was general manager of the Sloss Company, and Mr. Costner was general superintendent.

The Court:

All right. I wish you would identify them.

Mr. All:

I did not think of that, Judge. I think it is well to identify them.

The Court:

Yes.

Mr. All:

Now, who represented the miners in those meetings.

A. The same mine committee was in office. At the first series of meetings, as I recall, there was no one present but the committee. Later on there was a Mr. Barco, who was a Federal Labor Conciliator, came in.

Q. Who was Barco?

A. He was a Federal Labor Conciliator.

Q. How does he spell that, B-a-r-c-o?

A. His first name was Newcombe or Newsome.

Q. Newcombe B-a-r-c-o?

A. Yes, sir.

Q. N-e-w-c-o-m-b-e?
A. I think so.
Q. You say he was a conciliator for what department?
A. Labor.
Q. Did he state how he happened to be in the meetings and who he was sent by?

Mr. Harris:
We object to that. Here is a statement of a man as to why he came to a meeting.

Q. Were the union representative there with him?
A. Yes, sir.

The Court:
Overruled.

Q. Were there where they could hear?
A. Yes, sir.
Q. What statement did he make with respect to who sent him or why he was there? What statement of that kind, if any, did he make in the presence and hearing of the committee—

Mr. Harris:
Same objection, if the Court please.

Q. —of the men.

The Court:
Overruled. The representatives were there—

A. He introduced himself—

Mr. All:
Wait a minute. The Judge is asking something.

The Court:
The representatives of the men were there at that time?

The Witness:
Yes, sir.

Q. Go ahead.
A. Mr. Barco stated he had been called by the union to help settle their differences and negotiate a new contract.
Q. Do you recollect who he said had sent him?
A. I don't recollect hearing him say who sent him. He said he had been called in and sent for.
Q. Did he say whether or not he was a representative of the Department of Labor?

Mr. Harris:
As I understand, when we object to the first question along that line, we don't have to bother the Court with other objections to testimony along that line?

The Court:
That is right.

Q. Who else was present besides the committee and Mr. Barco in those meetings?
A. Mr. Reid Robinson.
Q. Do you know who Mr. Reid Robinson was?
A. He was president of the Smelters Union.
Q. You mean the International Union of Mine, Mill & Smelter Workers; he was president of the whole organization?
A. He was national president.
Q. Do you recollect how many meetings he was present at?

A. He was at at least one at Sloss Mines, and he might have been in another at the Birmingham office,—I wouldn't say.

Mr. Harris:
We object to him stating what might have happened some place.

The Court:
That part is sustained.

Q. You mean by might have happened, speaking from your recollection—

The Court:
You don't know?

The Witness:
No, I don't know. I know of one meeting I was in with him.

The Court:
That is the one you are testifying positively about?

The Witness:
That is right.

The Court:
That is admitted as evidence.

Q. Now, in these meetings, including the meetings in which the local committee or local representatives were present, and the meetings in which Barco and Robinson,—Reid Robinson, one or both were present, was there any discussion or suggestion with reference to the face to face policy which was in effect at the Sloss Mine?

A. I don't recall it being discussed at all.

Q. Do you remember in a general way what some of the major bones of contention were?

Mr. Harris:
I object to the question of what is a major and a minor bone of contention, Judge. Who knows but what is major to him would be minor to the Court?

The Court:
Were there any other contentions taken up?

Mr. All:
Sir?

The Court:
I just asked him if there were any other contentions taken up.

Q. Was the contract taken up?
A. Yes, sir.
Q. But your recollection is the face to face matter was not discussed?
A. Was not.

The Court:
You have been over that.

Q. Was an agreement or contract finally executed after those discussions, in which Mr. Barco and Mr. Robinson participated?
A. Yes, sir.

Mr. Harris:
May I see that?

(Mr. All hands paper to Mr. Harris.)

Mr. Harris:

I again call Your Honor's attention to the fact this does not purport to be a contract between the union and the company, the International Union of Mine, Mill & Smelter Workers, parties defendant in this case.

It is a letter addressed, or whatever you might call it, to the employees of Sloss Red Ore Mine. It has got typed, "Employees Representatives", and three signatures, and then it has "Sloss Sheffield Steel & Iron Company," and the signature of Ben Davis, just as the one a while ago had the signature of Ben Davis and not the signature of Mr. Harper.

Mr. All:

I don't want to get into any discussion about that, if the Court please, because I don't think that makes any difference.

Q. I hand you this—

The Court:

Well, who were they? Let him tell who they were.

Mr. Bronaugh:

That is what he is going to do now.

Mr. All:

What is the next exhibit?

The Clerk:

Sloss Exhibit Number 9.

Mr. All:

I am going to identify this as Sloss Exhibit Number 9.

(Thereupon a document addressed "To the Employees of Sloss Red Ore Mine," and consisting of seventeen num-

bered paragraphs, and signed "Employees Representatives, John Hill, W. A. O'Neal and Jesse Gaines," and "Sloss-Sheffield Steel & Iron Company, Ben Davis," and dated the 13th day of September, 1937, to which was attached one sheet entitled "Outside Rates", one sheet entitled, "Inside Rates", one sheet entitled "Entry Yardage Rates," and one sheet entitled "Division of Tonnage Rate to Men of Crews, Hand Loaded Ore," was thereupon marked Sloss Exhibit Number 9.)

Q. I will ask you if those negotiations resulted in the execution and delivery of this instrument by the parties?

Mr. Harris:

We object to whether it resulted or not. He can tell what they did.

The Court:

I think that is objectionable, Mr. All. In other words, it is a conclusion as to whether it resulted from the negotiations.

Q. Were these men, whose signatures appear on this original instrument, John Hill, W. A. O'Neal and Jesse Gaines, were they men who had—with whom you had been dealing?

A. Yes.

Q. Were they present with Reid Robinson and Barco at those meetings that Barco and Reid Robinson attended?

A. Yes.

Q. And do you recollect—are those the same men that met with you as the committee of the union on former occasions?

A. Yes, sir.

Q. These same men?

A. Yes, sir.

Q. And this contract was executed on September 13, 1937, was it not?
A. Yes.
Q. You saw that date on there?
A. Yes, sir.

Mr. All:
I want to call the Court's attention to Section 11 (a) of this instrument.

The Court:
You are introducing that?

Mr. All:
I am introducing this here, yes, sir, as Sloss Exhibit Number 9.

The Court:
I overrule the objection to it. I asusme he has the objection.

Mr. Brodie:
Sir?

The Court:
The objection is overruled. I think you objected.

Mr. Brodie:
Yes, sir.

The Court:
Paragraph 11?

Mr. Brodie:
I understand I have an objection to all these documents.

The Court:
I understand.

Mr. All:
Section 11 (a), which I desire to read into the record, if the Court please,—

The Court:
Section 11-(a)?

Mr. All:
Section 11 (a). "An eight-hour day and five days per week per employee shall prevail, exclusive of the lunch period. The eight-hour day means eight hours of work in the usual working places, exclusive of the lunch period.

"The Sloss Company shall have the right—" This paragraph is not pertinent to this. "The Sloss Company shall have the right during the entire period of this understanding to operate the mine one, two or three eight-hour shifts by different crews of men within each 24-hour period."

I want to identify that and substitute a copy.

Mr. Brodie:
What is the date of that, Mr. All?

The Court:
That was September, 1937, wasn't it?

The Witness:
13th.

Mr. All:
Yes, sir. September 13, 1937.

Q. After the execution of this contract state whether or not the company and the employees of the company continued on the face to face or working place to working place policy?

Mr. Harris:
The same objection I assigned to that same question before.

The Court:
Overruled.

A. They did.

Mr. Harris:
Except.

Q. Mr. Harper, do you know or can you—Do you know whether or not there was an increase in wages?

The Court:
What was your question?

Mr. All:
I am asking him whether or not he knows in this contract there was an increase of wages granted, and I am just asking if he knows. If he doesn't know, I will get it somewhere else.

The Court:
Well, does he have to read it to tell?

Mr. All:
He may refresh his recollection by looking at it.

The Court:
You are asking him if there was an increase?

Mr. All:

Yes, sir, an increase.

A. There were.

Q. There were increases in pay?

A. Yes, sir.

Q. Now, Mr. Harper, you have testified that you left the Sloss Company in 1938?

A. Yes, sir.

Q. Consequently you didn't deal with the Committee or representatives—with any committee of Sloss for the miners or any union Committee for the following year, did you?

A. No, sir.

Q. You did not?

A. That is as far as I go.

Q. In other words, that 1937 agreement ends your participation in the negotiations?

A. Yes, sir.

Mr. All:

Your Honor, that is all for the present, unless something is brought to my attention.

The Court:

Do any of the rest of them over there want to ask anything? Mr. Burr?

Mr. Burr:

No, sir, not anything.

The Court:

All right; take the witness.

Cross Examination.

(By Mr. Harris):

Q. Mr. Harper, up until you left the Sloss Company in 1938, you never saw any contract between the Sloss

Company and the International Union of Mine, Mill & Smelter Workers beginning or ending this contract made and entered into between the Sloss-Sheffield Steel & Iron Company and the International Union of Mine, Mill & Smelter Workers, did you?

A. The contracts were not headed up that way, no.

Q. And when you first started dealing with the men that you have called the Union representatives, you informed them that the company wouldn't recognize the union, didn't you?

A. No, sir.

Q. In the agreements that have been offered in evidence here for 1937 and for 1936—the union was still in existence in '37 and '36, wasn't it?

A. Yes, sir.

Q. They still had locals there at the Sloss Company's mines, didn't they?

A. Yes, sir.

Q. And in those agreements you told them that "We won't deal with you as representatives of the union; but you will have to sign these papers as representatives of the employees," didn't you?

A. No.

Q. Who was it told them that?

A. I don't know.

Q. And you knew at the time the agreement was signed that these men who had to sign as employee representatives were officers of the local union, didn't you?

A. Yes, sir.

Q. And the man who signed it was not Mr. Harper, who is testifying, but a man named Ben Davis, wasn't it?

A. I didn't sign the contract.

Q. You didn't sign anything?

A. No, sir.

Q. Where is Mr. Ben Davis?

A. I don't know.

Q. Does he work for the Sloss-Sheffield Steel & Iron Company?

A. I presume so.

Q. Was he in any conferences with you and these men?

A. In some, yes.

Q. You didn't name him in naming them, did you?

A. No, I don't believe I did.

Q. All right. Then, you would conduct negotiations with these men and when the time came to sign another man did the signing; is that right?

A. Not altogether.

Q. Well, is there any instrument between the company and employee representatives or union representatives covering agreements which bears your signature as the official of the Sloss Company?

A. Only one.

Q. What instrument was that?

A. That is the notice that was posted up.

Q. The only thing you—And that is the one Mr. All introduced in evidence a while ago where you just posted a notice?

A. That is all.

Q. And you worked with the Sloss Company when the first instrument recognizing the union as a union was signed, were you?

A. When was that?

Q. 1940, wasn't it?

A. I wasn't with them then.

Q. You don't know? Now, Mr. Harper, the whole time that you worked for the Sloss-Sheffield Steel & Iron Company every ore miner in that mine was on a tonnage basis, wasn't he?

A. All those who loaded ore were.

Q. The head drill man, his helpers, the muckers, the operators of that machine there at the heading, all of them,—the drag,—all of them were on a tonnage basis weren't they?

A. Either tonnage or something similar. For instance—

Q. Yes, and it didn't make a particle of difference about travel time or walking or riding or anything else in the pay they got, did it?

A. They were not paid for traveling.

Q. What?

A. They were not paid for traveling.

Q. They were not paid on a time basis either, were they?

A. Yes.

Q. They were paid by the ton, weren't they?

A. Yes, but they worked a certain number of hours.

Q. But if they got their tonnage it didn't matter whether they got it in three hours or whether it took them six hours or eight hours?

A. They worked all day.

Q. My question was if they got their tonnage it didn't make any difference whether they worked three hours or six hours or nine hours, did it?

A. They didn't have a fixed time.

Q. How did the tonnage enter into their consideration?

A. An estimate of what they should do.

Q. How did that work?

A. From previous experience.

Q. When did they start out their previous experience to estimate what they should get? When did that start?

A. I don't know.

Q. Was that peculiar method in operation when you went with them in 1933?

A. No. Part of them were on tonnage then and part of them on task.

Q. What was the difference between being on tonnage and being on task when you went with them in 1933?

A. There is not much difference.

Q. Tell us what it is.

A. Well, a task was what one of these mechanical loading crews was supposed to produce in tonnage to get their standard wages.

Q. All right. Then what was a flat tonnage basis? What was that?

A. You mean the amount of money?

Q. No. You said some men were on a task basis and some were on a tonnage basis. What was the tonnage basis? How was that computed?

A. The tonnage basis was a flat rate per ton.

Q. When you went to the Sloss Mine in 1933, it was on what is known as a contract system, wasn't it?

A. Yes, sir.

Q. Now, tell the Court what the contract system of mining was as operated in the Sloss Company when you went there in 1933?

A. The system then in effect was that the head miner, who was then call the contractor, was credited with the tonnage that all the men loaded, and their earnings were deducted on the payroll from the tonnage he produced.

Q. And how was that contractor's men—How were their wages figured then? How did they know what to deduct from what the contractor had coming to him?

A. Each man had a rate.

Q. Each man had a rate?

A. Yes, sir.

Q. What kind of rate?

A. A rate per ton.

Q. A rate per ton, and if one man got out 25 tons and another man got out 15 tons a day, the 25 ton man got more pay, didn't he?

A. Yes, sir.

Q. And how long did that tonnage rate continue with your contractor system in the mine of the Sloss Company after you got there in 1933?

A. Not very long. I think it was changed early in 1934.

Q. There haven't been any contractors in the Sloss mines since early in 1934?

A. No.

Q. You didn't have any contract men operating there, —didn't in 1935, '6, '7 and '8 up until the time you left?

A. Not by that title. They all worked on tonnage.

Q. There never had been a time while you were there from 1933 until you left in 1938 but what the production crews worked on tonnage?

A. That is right.

Q. That is right?

A. Yes, sir.

Q. This mine of the Sloss Company had how many men working in it when you first went there in 1933; how many in number, and counting in the day shift and how many in the night shift?

A. About 550 in all. They were just about evenly divided.

Q. And those men, as they went down into the mine, rode on specially fixed little cars that had the seats slanting so that the men would be sitting level as they went down the slope, didn't they? The seat wasn't exactly like the seat in a street car, but as the little car started down in the mine the men would still be sitting on a horizontal plane, wouldn't they?

A. Not exactly. The seat sloped.

Q. The seat sloped? Whereabouts in the mine was it it was so steep you had to have your seats fixed at an angle so that when you started down this slope or manway the men would be sitting on a horizontal plane; where is that?

A. I don't know where that is.

Q. How far is it from the mouth of that mine to where you get to the place where there is a fault and a tremendously high hill in the ore?

A. It is about 3800 feet.

Q. About 3800 feet?

A. Yes, sir.

Q. They hadn't mined that out when you got there?

A. No, sir; it was still there.

Q. It was still there?

A. Still there.

Q. That place was then and is now so steep in walking up or down it a man would have to catch hold of an ore car that happened to be there, or anything else available?

A. You didn't have to walk up that hill.

Q. They got around that hill by walking a distance of 1200 feet, wasn't it?

A. No, sir, it wasn't that far.

Q. How far did the men have to walk in going to the face of the different rooms or headings in going around that hill?

A. We are not thinking about the same hill.

Q. Well, we are thinking about the same hill, aren't we?

A. You are talking about the hill where they had to climb up on the cars. That is where the men got on the mantrip.

Q. Let's take the very first one: You mean on the mantrip coming out the main slope?

A. Yes.

Q. Don't you know in the Sloss mine at that steep hill I am talking about, that the company has put in little cars for the men to ride down that place?

A. That is where the man trip started from when I was there.

Q. That is where the man trip started from and they came on down that steep hill and got out and went up the main slope, those same cars?

A. It started from that high point going out.

Q. Did they ride the same cars down that hill and up the slope, or did they switch to other cars?

A. Yes, sir.

Q. How high is that hill?

A. It is 3800 feet out to the surface. It is on 30 degree pitch.

Q. That is the slope, but take here, down in the mine, how high is it?

A. It is just a short hill, about 300 feet.

Q. About 300 feet?

A. Yes, sir.

Q. Do you know what degree slope it is?

A. About 40.

Q. About a forty degree slope?

A. Yes, sir.

Q. Did the men have to walk up that 40 degree slope going to their places of work while you were there?

A. No, sir.

Q. How did they avoid it?

A. The man trip stopped on that hill and they got out and went through an opening in the ore and walked around to the foot of the hill.

Q. Walked around to the foot of the hill, but the ore was brought around and hauled up that steep place?

A. The ore was hauled up the hill, yes, sir.

Q. I don't recall hearing you say, when I said they had to walk 1200 feet,—I don't recall hearing you say—

The Court:
300 feet.

Mr. Harris:
It is 300 feet straight up.

The Witness:
300 feet on the pitch.

Q. But the distance they had to walk around horizontally to get around it, what was that distance?

A. Oh, between three and four hundred feet, I would think.

Q. Mr. Harper, the mine of the Sloss-Sheffield Steel & Iron Company has so many places where it is uphill and down dale and up hill and down dale that the ore cars, when they start from the face where they are loaded at

the face, have to be handled seven different times before they get to the mouth of the mine, don't they?

A. I don't know.

Q. Tell this Court how many different times the ore cars of the Sloss Company had to be handled while you were there as superintendent from the time those cars left the loading place near the face until they got to the mouth of the mine?

A. All of them were handled at least twice, and I would say a maximum of five times.

Q. A maximum of five times?

A. Yes, sir.

Q. What was the occasion of them being handled a maximum of five times?

A. Different steps in the haulage. They couldn't be handled all out at one shot. They had to be relayed.

Q. What were those different steps? Were they vertical steps or horizontal steps?

A. Vertical.

Q. Vertical?

A. Pulled up one side of a hill and down the other side with a hoist engine.

The Court:

What was that?

The Witness:

Pulled up one side of a hill and down the other with a hoisting engine.

Q. The hoist engine—those hills were so steep the hoist engine couldn't go up the hill and come down, but you pulled them over the hills by cables,—is that right? You didn't have any electrical locomotives going up and down those hills?

A. Yes, sir, we had three locomotives.

Q. On this steep hill did the electric motor go up and down the hill? You had what you called a tuggle hoist there?

A. No, it wasn't a tuggle hoist.

Q. What kind of a hoist was it?

A. An electric hoist.

Q. Where was the cable you wound up to pull them? Was it at the top of the hill or over on the other side?

A. The top of the hill.

Q. How many places did you have that were so steep you had to use things like that?

A. My recollection three, maybe four.

Q. Had they divided the mine off in sectors, that is, cut it off in four different groups, and figured out the average traveling time to group A, group B, C, and D, while you were there?

A. No.

Q. You didn't make any computation of the time the men were walking while you were there?

A. No.

Q. When you left there—what month or day was it you left there in '38?

A. The last day in May, 1938.

Q. The last day in May, 1938. At that time what was the greatest distance that a man walked when he got off the man trip here to the face where his drills would be?

A. I couldn't say anywhere near accurately.

Q. Well, you have been through the mine, haven't you?

A. Yes.

Q. Although you didn't go down every day, of course, you still have been there once a week or once a month while you were a superintendent, haven't you?

A. I would make a rough guess of somewhere around a half a mile, between half a mile and three quarters.

Q. Between half a mile and three quarters?

A. Yes, sir.

Q. How fast were you getting straight into the ore in 1937? At that time how far was your furtherest heading from the man unloading station as compared with the furtherest heading in 1936? Do you get what I mean?

A. Yes. Probably advanced a half mile, maybe—

Q. In a year?

A. Not a year.

Q. Did you average—What?

A. No, not in a year.

Q. How far did it advance from the time you first went there in 1933 until you left there in 1938?

A. Maybe three or four thousand feet.

Q. Did you go faster some years than you did other years—

A. Yes, sir.

Q. —due to business conditions and—

A. That would be due to the regularity with which the mine operated.

Q. Now, the Sloss Company, in maintaining those bath houses while you were there, charged the men for the use of the bath houses, didn't they?

A. No, sir.

Q. You mean to say there wasn't a bath house charge of forty or fifty cents a month?

A. No, sir.

Q. As to each man?

A. No, sir.

Q. If there was, you don't know anything about it?

A. I don't know anything about it.

Q. Where were the places where the drill bits were sharpened; down in the mines or up on the surface?

A. On the surface.

Q. And where were the tripod legs repaired, down in the mine or up on the surface?

A. Up on the surface.

Q. How about the hangers and C-hooks, where were they repaired?

A. All repair work was done on the surface.

Q. Did you have a blacksmith shop up there on the surface?

A. Yes.

Q. How far was the blacksmith shop from the opening to Number 2 mine? That was the mine you were superintendent of, wasn't it?

A. I would say three-eighths of a miles, something like that.

Q. Now, at the Sloss mine did—1933 to 1938, did you have a Number 2 mine a board where, when a man checked in he would toss you a brass check and you would put it up on the board, every man when he went to work?

A. No, sir.

Q. Did you, in 1933 up to 1938,—did your men have brass checks?

A. No, sir.

Q. What kind of checks did they have?

A. The only checks we had were small brass discs they put on their mine cars to identify them when they were brought out.

Q. I beg your pardon. Put on what?

A. On their mine cars which they loaded.

Q. Oh, the ore cars?

A. Yes, sir.

The Court:

To show whose ore it was?

The Witness:

To show whose ore it was.

Q. To show what man was to get paid for mining the ore that was in that car?

A. That is right.

Q. That is right, and you didn't have any record at all whereby, while you were there, where the men, as they came in, turned in a brass check or other check before they went down in the mine?

A. No.

Q. And you were there from 1933 up until the last day of May, 1938?

A. Yes, sir.

Q. Now, these men who were putting their little brass checks on the cars showing that they were to get pay for the cars did other work besides loading cars with ore, didn't they? Didn't they?

A. I don't know.

Q. Well,—

Mr. All:

Mr. Harper, will you talk out a little louder?

Q. —what do you mean by dead work?

A. Dead work?

Q. Yes.

A. Dead work means some sort of maintenance work like cleaning up rock falls and things like that.

Q. Does it mean laying track?

A. No, I wouldn't call laying track dead work.

Q. Does it mean laying pipe line?

A. No, sir.

Q. All right. These men who were on tonnage basis had to clear up rock falls, if there were any rock falls around in their stope or heading or wherever they were drilling?

A. They pulled down any loose rock it wasn't safe to work under.

Q. All right, but suppose it wasn't merely a loose rock that might fall and injure their head or back or break an arm or leg; but the rock had already fallen; who had to move that?

A. If it was right up in their working place they were due to move it.

Q. All right. Suppose they had to have—They had to have air for their drills, didn't they?

A. Yes, sir.

Q. And somebody had to lay pipe lines to get that air up there?

A. Yes, sir.

Q. These men on tonnage basis had to do that, didn't they?

A. They extended the line. The line was already there.

Q. They also extended the track at times?

A. Yes, sir.

Q. These men on these tonnage bases?

A. That was all part of their tonnage rate.

Q. Was all part of their tonnage rate, so that there were days when these men on these crews would be so busy doing dead work they didn't draw a single penny for that day's work?

A. Shouldn't have been.

Q. You have seen those men so busy down there doing dead work there would be only one car come out of that mine with a brass check on it, or an entire crew of five men would be so busy doing dead work there would be not more than one car come out with a brass check on it?

A. Anything that bad, the company would pay for it.

Q. I didn't ask you whether the company paid for it. I asked you if you had seen it when the entire crew was so busy only one car came out? Have you seen that?

A. Yes, sir, I have seen that. I have seen it when they didn't work any.

Q. When you went on a task basis, how many tons did you assign as a task for a man?

A. On the old handloading basis I think the old task was 35 tons for five men.

Q. When you put in the mechanical loaders, what was the task for the men?

A. How many tons?

Q. Yes.

A. It was variable; around 125 tons.

Q. How many men on a crew then?

A. About 8 or 9.

Q. Did you ever go through the period while you were there of using shakers instead of mechanical loaders?

A. No, sir.

Q. You didn't have that system where you had those beams there and just shook it down like—

A. No, sir.

Q. When did they install mechanical loaders in Number 2 mine of the Sloss Company?

A. I couldn't say.

Q. Were they already there when you went there in 1923,—I mean 1933?

A. Yes, sir.

Q. Was there much hand loading in the mine after you got there?

A. The hand loading and mechanical loading ran about 50-50.

Q. Did that continue the whole time you were there?

A. Approximately.

Q. And then the task, about 50 percent of the drill crews was on a 7-ton basis per man, and where they had a mechanical loader it went up to twice that per man, practically speaking?

A. Roughly, yes.

Q. Yes, sir. Is that hand loading in the Sloss Company made necessary on account of the steepness of the different hills in the ore and the narrow places where you have to work on that account? Why is it that the Sloss Company—I mean is there any physical reason in the mine why you couldn't have mechanical loaders throughout the entire Number 2 mine of the Sloss Company?

A. I couldn't say about that. Narrow places and headings were driven by hand.

Q. Yes, and about half of the ore loaded was in the hand places?

A. Yes, sir.

The Court:

They don't have any drills—I mean machines?

The Witness:

Yes, sir.

The Court:

I thought you said the ore was drilled by hand.

The Witness:

Loaded. All the ore is drilled.

Mr. Harris:

Just a question or two. That will save these gentlemen having to cross examine the witness.

The Court:

All right, sir.

Q. You used the expression on your direct examination of "working face" and Mr. All used the expression "working place". Now, what is meant by you by the phrase "working face"?

A. The working face is where a production man works. That is where the ore is actually mined.

Q. You mean—

A. Blasted down and loaded.

Q. Let's suppose that a stope comes right up to here, and this mahogany desk is underground and is a solid mass of ore and that we are going to get that ore out and haul it up to the top. Is that the face of that ore? What did you understand by the working face?

A. That would be the face, yes, where it is mined.

Q. Where it is actually mined?

A. Correct.

Q. Now, then, is there any area around that, or was there any area around that that was marked off as a working place where you were at the Sloss Company?

A. It wasn't marked off, but working the stope, the whole stope was considered as a working place.

Q. Not merely there in the face, but—

A. All the way out to the engine that loaded the ore.

Q. Well, by all the way out to the engine—your stopes were never more than 200 feet? That mechanical loader didn't operate more than 200 feet?

A. 300 feet.

Q. It operated 300 feet? So, what you understood by the working place would not be at any time more than 300 feet of the ore that was to be blasted out?

A. Approximately that, but—

Q. Now,—

Mr. All:

Let him finish.

A. What I was going to say, under our system the ore was not only loaded, but it was brought out to the slope, and the fellow who transported this ore, that was his working place in this heading.

Q. The man who transported the ore out to the main slope wasn't a part of the drill crew, was he?

A. Yes.

Q. Who did you say constituted a drill crew? Let's get that. Let's see if you had a drill crew like they had at the Tennessee Company. Start at the top of your drill crew?

A. The ordinary drill crew had one head miner—

Q. All right; who next?

A. Two drill runners.

Q. Who next?

A. One drill helper.

Q. Who next?

A. The drag engineer.

Q. He is the man who operates the mechanical loader?

A. Yes, sir.

Q. Who else?

A. One tram engineer.

Q. What did he do?

A. He operated, as a general rule, the little engine that handled the cars back and forth between the slope and the side track where the drag loader was.

Q. How many muckers?

A. Sometimes three.

Q. After the drag loader had loaded these little cars, the tram engineer would haul them out to a side track?

A. Yes, sir.

Q. Ordinarily, how far would that side track be from the place where he pulled out—that is, where they were loaded?

A. That distance would run up to—from nothing in a new place just starting on up to say 1500 feet.

Q. Did he haul them all the way to the main slope, or did he haul them to a side track where somebody else would pick them up?

A. Somebody else would pick them up.

Q. What do you call that track where someboy else picked them up and hauled them to the main slope? What do you call that track?

A. Call that a nuck.

Q. N-u-c-k?

A. Yes, sir.

Q. And from that track how far would they have to be hauled?

A. Out to the surface.

Q. They would be hauled to the main slope and each one—

A. That was by another crew, not the drag crew.

Q. And it was in that hauling operation you had as many as five operations in the mine to get the tram cars out?

A. Yes, sir, after the company took charge of the hauling.

Q. When did the company take charge of the haulage?

A. At this nuck.

Q. You considered the man had not finished his connection with the ore, or had not completed loading the ore until it got to the nuck?

A. Part of his consideration was that he deliver it to this nuck or side track.

Q. That was part of the consideration on which he was paid?

A. That is right.

Q. Suppose a crew got out all the tonnage they wanted to get out that day on a contract basis; could they pick up and leave the mine any time they wanted to?

A. No, sir.

Q. Suppose they got out their full task, and got out that much ore, and the drillers had drilled all the holes and they were ready to shoot; did they have to sit around —if they finished by twelve o'clock did they have to sit around until shooting time before they could leave?

A. They couldn't leave by twelve.

Q. Didn't you have in your mine where some of the men could get out a full task in three hours?

A. No, sir.

Q. You never saw that happen?

A. No, sir.

Q. You never did go down in the T. C. I. mine Number 13 and those other mines, did you? Have you ever been down in their mines?

A. Never been in 13.

Q. Now, suppose, while you were out there as superintendent of this mine that they have cleaned up all the

ore that was shot down by the previous shift, and they have finished, the muckers have finished by twelve o'clock; was there ever a time out there with you where those muckers had to then stay from twelve o'clock until the man loading skip went out before they could leave the mine?

A. I don't believe I ever saw them stay that long. They frequently came over to the yard early sometimes. If the drill man hadn't drilled enough ore to last all day, they might get through a little early.

Q. That frequently happened, didn't it?

A. Sometimes; not so frequently.

Q. Did you ever devote any thought or attention to the ventilation in Sloss Mine Number 2 while you were out there?

A. Yes, sir.

Q. When you left there in May, 1938,—

Mr. Harris:

Judge, do you want to adjourn for lunch? I only have two or three more questions.

The Court:

Go ahead.

Q. When you left there in May, 1938, what arrangement was there for any air through these mine to the men? How did you work it to get air to the men who were working a mile or more from the surface?

A. We had a fan about a mile and a half from the surface.

Q. You had a fan?

A. Yes, sir.

Q. Way back down in the mine?

A. Yes, sir.

Q. And did you have brattices back down in there?

A. A few.

Q. Did you have any other arrangements for shifting the air in the direction you wanted it to go so the men would get fresh air besides a few brattices?

A. That is about all.

Q. Was the air of the same quality from the time you entered the mine until you got to the most distant working face?

A. No, sir, it was not.

Q. What was the difference in the air as you went deeper into the mine? Did it get better or did it get worse?

A. It got warmer.

Q. How about moisture? Did it pick up more moisture—

A. Yes, sir.

Q. —as you went down in there?

A. Yes, sir.

Mr. Harris:

I think that is all from our cross examination.

Mr. All:

Just one or two questions, Judge.

Re-Direct Examination.

(By Mr. All):

Q. Mr. Harper, Mr. Harris asked you about signing any of these contracts, asked you if you ever signed any of these contracts, and I believe you stated that you didn't?

A. Yes, sir.

Q. Were you an official of the company?

A. No.

Q. Was Mr. Davis an official of the company?

A. Yes, sir.

Q. What was he?

A. He is—he is vice president and general manager.

Q. Vice president and general manager. And the company was signed—I mean whatever agreements were signed were signed by the company by an official of the company, which you were not?

A. That is right.

Q. That is right. Was it the policy of the company, with respect to the negotiations at Red Ore Mine at Bessemer that you should represent the company in those negotiations?

Mr. Harris:

We object to what the policy was.

Q. Were you designated by Mr. Davis to do that, or by the company?

A. Part of the time, yes.

Q. Yes.

A. He came down frequently to the meetings.

Q. Now, he—Mr. Harris asked you some questions about the—whether or not you or the company refused to deal with the union or did you recognize the union.

I will ask you if you did not, in the negotiations that you had—if you did not freely discuss the matter of the working conditions and whatever matters Mr. Horn—

Mr. Harris:

We object to what he—

Q. —brought up or presented for discussion with you: if you didn't freely discuss those matters with him or not—

Mr. Harris:

We object to that as leading and argumentative and—

Q. —and negotiate with him?

The Court:
I overrule the objection.

Mr. Harris:
We except.

A. We always discuss questions with the committee or also Mr. Horn or Mr. Richardson or anybody that came in representing the employees at any time.

Q. All right. You discussed them with anybody that came in representing the Department of Labor?

A. Yes, sir.

Mr. Harris:
We object to that.

Q. Did you discuss the matters freely with Mr. Reid Robinson?

A. Yes.

Q. Now, Mr. Harris asked you about these little cars that were used in these man trips, employed in the man trip to carry the men down.

You have stated approximately the dimensions of those cars, haven't you?

A. Yes, sir.

Mr. All:
Mr. Burr, is there anything else you want or you have to ask him?

Mr Burr:
No, sir.

Mr. All:
I believe that is all.

Mr. Monaghan:
Wait just a minute.

Mr. Hall:
Wait just a minute. Just one second.

The Court:
Just a minute.

Mr. All:
I think that is all.

(Witness excused.)

The Court:
Court is adjourned until two o'clock.

(Whereupon, at 12:25 P. M., July 15, 1941, a recess was had until 2:00 P. M. of the same day.)

After Recess, 2:00 P. M.

The Court:
Who will you have?

Mr. All:
Mr. Costner.

1364 T. E. COSTNER, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

The Clerk:
What is your name?

The Witness:
T. E. Costner.

(By Mr. All):

Q. Mr. Costner, your initials are T. E.?

A. Right.

Q. T. E. Costner?

A. Yes, sir.

Q. How old are you, Mr. Costner?

A. Forty-one.

Q. Forty-one?

A. Yes, sir.

Q. Are you now general superintendent of the mines of the Sloss Company?

A. I am.

Q. Mr. Costner, will you tell the Court what your experience has been in mining, particularly in mining, and your training for that work?

A. I have lived around mines all my life. I have worked in open pit mines and coal mines while I was going to school from 1911 to 1919.

In 1919 I entered the employment of the Alabama Company as rodman in the engineering department. I went through the various stages of engineering and was an engineer for that company at the time it was acquired by the Sloss Company in 1924.

I remained an engineer for them until 1929. I was then mine foreman for the Sloss Company at the Lewisburg Coal Mine until 1930. From 1930 until 1935 I was superintendent of the Lewisburg coal mines. From 1935 until the present time I have been general superintendent of the mines of the Sloss Company.

Q. Were you born in this district, Mr. Costner?

A. I was born in Talladega County, this state.

Q. Where did you take your engineering?

A. At Alabama Polytechnic Institute.

Q. That is Auburn?

A. Yes, sir.

Q. Now, to break that up again, just to get a picture of it, what were the inclusive years when your duties had to do with ore mines as distinguished from coal mines?

A. From 1919 until 1924 I was in ore and coal together.

Q. All right.

A. Then I was out of ore until 1935.

Q. Yes.

A. Since 1935 until the present time I have been in ore and coal.

Q. Now, during the time that you were in ore and prior to 1935 when you became general superintendent, I believe you stated—

A. Right.

Q. —your connection with ore—you had a combination of connections with ore and coal as engineer?

A. Right.

Q. Now, what connection—what did you have to do as engineer with respect to the mine layout and the methods of mining and the methods of driving slopes and headings, the general underground layout?

A. I—

Mr. Harris:

We object except as confined to ore. The method of coal mining hasn't anything to do with it at the present time.

The Court:

Well, if it is similar to ore that is all right. I think I will let him answer.

Mr. All:

With the statement the coal is pertinent—

The Court:

I can't hear you.

Mr. All:

We make the statement at this time that Mr. Burr did—that the coal is perinent, but at this time it will be confined to ore.

The Court:

All right.

Q. Go ahead.

A. I helped plan and arrange the layout for the mine operations; I helped make the surveys and made the surveys after the work was done, and I set the level and made inspections to see that the plan was carried out for the underground work.

Q. Were you in charge and consulted on the layout for the underground mines?

A. I was so far as our own organization was concerned.

Q. What do you mean by that?

A. You said was I consultant.

Q. Yes.

A. I was as far as our superintendent and officials were concerned.

Q. You mean of the Sloss Company?

A. Yes, sir.

Q. Now, the coal mines were underground places too, weren't they?

A. Right.

Q. And without going into details, the Alabama Coal Mines are slope mines?

Mr. All:

I don't care to go into it to any further detail than that except to show his experience.

Mr. Harris:

We don't see the materiality—

The Court:
All of them are not slope mines.

Mr. All:
The larger ones are.

Mr. Harris:
We object to the coal mines. We don't see the need to tell his coal mine experience.

The Court:
Well, leave that off for the present.

Mr. All:
All right.

Q. Then, Mr. Costner, where is the Sloss Company now mining iron ore?

A. We have open pit operations in Franklin County and in Talladega County. We have underground operations at Ruffner near Irondale, and at Sloss Red Ore adjacent to Bessemer.

Q. Those open pit mines you mentioned, do those undergo travel time to any substantial—

Mr. Harris:
We object. There is no underground operations—Pit mines are not in this case. One is up in Russellville and the other in Talladega. Then, to say it involves travel time, that is entirely beside the question.

The Court:
Suppose it did involve a great deal of travel time?

Mr. Harris:
That hasn't anything to do with this case.

The Court:

Does the mine have to have a roof over it?

Mr. Harris:

No. As a matter of fact, if they go into the brown ores they mine those in an entirely different operation than what the Court is concerned with here.

Back in the days when I was familiar with the brown ore operations, they mined them with steam shovels, surface operations, where they would strip off the cover.

The Court:

I sustain the objection on that point.

Mr. All:

If the Court please, who is going to make a statement about how that is to be done, the lawyer or the witness?

The Court:

We are not going into strip mining.

Q. Are they strip mines?

A. They are.

Mr. All:

I was after eliminating them to start with unless they have some materiality bearing on the case.

Q. Now, with respect—you say they operate how many mines?

A. Underground mines?

Q. Yes.

A. They operate two.

Q. What are their names?

The Court:

He has mentioned them; Ruffner and Red Ore.

Q. We will take the one on Red Mountain at Bessemer. Are you familiar with the method of mining that is followed there?

A. I am.

Q. And the custom of mining?

A. I am.

Q. Yes, sir. Mr. Costner, where is that mine?

Mr. All:

Crampton, do you want to look at this map?

Mr. Harris:

No, that is all right. I will move around over there if I may.

Q. Will you put this map on the board?

A. Yes, sir.

(Thereupon a map was placed on the blackboard.)

Q. Which way are you going to look at it?

A. This is the entrance at this point here (indicating on map).

Q. That is all right.

A. You will be looking down into the mine from the top.

The Clerk:

Do you want that marked as an exhibit, Mr. All?

Mr. All:

Yes, sir.

The Clerk:

It will be Number 10.

Mr. All:

Sloss Exhibit Number 10.

(Thereupon a map bearing the title, "Map of Sloss Ore Mine, Sloss-Sheffield Steel & Iron Company, Birmingham, Alabama, Scale 1 inch equals 200 feet," was marked Sloss Exhibit Number 10.)

Q. Mr. Costner, how many slopes or openings are shown on this map?

A. Two; the Number 1 slope, which is idle, and the Number 2 slope, which is now operating.

Q. How long has Number 1 been idle?

A. Since 1932, I believe.

Q. This is the one now operating?

A. Yes, sir.

Q. Is the method of mining employed in the two similar?—

A. They were—they are similar.

Q. I am talking about the general method of driving slopes and headings and stopes, are they general?

A. Yes, sir.

Q. We will take Mine Number 2. You are looking at that exhibit as if you were standing here at the top of the map?

A. Right.

Q. Is that right?

A. Yes, sir.

Q. Can you tell the Court what the various things are here on this map? That network, what does that indicate?

A. These are pillars left following original mining off the main slope. These places here are called headings and they were driven out there.

Q. Your are pointing. Give directions. At what direction, with respect to the slope, are the headings driven?

A. Approximately 90 degrees to right and left.

Q. All right. Now, how far had that slope been driven at the time you became superintendent in 1935?

A. It was approximately to 85, right here, right at this —right along here (indicating on map).

Q. You mean that slope had been driven from the top down to—

A. To about there.

Q. Down to about a place indicated there as 85?

A. Yes, sir.

Q. I notice here just above the point where you indicated there is an apparent change of direction. What is that?

A. This vacant space there is the property of the Tennessee Company.

Q. You mean the vacant space on the outside of your line?

A. Right. This line here indicates the extent of the Sloss ownership. This—

Q. Wait just a minute. You mean the heavier black lines indicate the outlines—

A. That is right. That is the land, and also the outline of the ore limit of the map, or the extent of the workings of the Sloss Mine all along that line there.

Q. The black line that borders the workings?

A. Yes, sir.

The Court:

That is on what side of the compass.

The Witness:

Of the compass?

The Court:

Is that the west side?

The Witness:

Yes, sir. This is the east side. Up and down this line here is north and south; that is, north is the top of the map.

The Court:

I want to ask you a question. Does your slope go practically the same direction as the Tennessee Company's slopes?

The Witness:

Generally speaking, for the first few thousand feet it does, but after that I am not sure, but they all enter from the outcrop and are driven approximately the same direction. They may vary at the bottom.

Q. The place you pointed out on the border of this map as being the property of the Tennessee Company, is that property of the Tennessee Company further—as you go from Birmingham to Bessemer, is that Tennessee Company property beyond the Sloss property, or is it shorter?

A. It is beyond the Sloss property.

Q. It is beyond Bessemer; that Tennessee Company property there is beyond Bessemer?

A. It is opposite Bessemer. It is the Muscoda property.

Q. All right. Go on.

A. This heavy line there represents the boundary line between the Woodward Iron Company's workings beginning there and our own workings here, so, on the original course this heading would have been driven, it would have gotten so close to the Tennessee Company's line that all our workings would be on one side of the property, so, in order to keep the workings divided to the right and left of the slope, this slope was turned in this direction shown here, and it is now in the center of the property we are mining.

Q. Mr. Costner, when you changed your capacity from engineer having to do with both ore and coal properties to become connected with coal properties exclusively, I

will ask you when that was and how far that slope had been driven at that time?

A. I have done very little engineering work in this particular mine so I wouldn't know just where the face was in 1930.

Q. You wouldn't know?

A. No, sir.

Q. All right. At 1934, the latter part of 1934, say October, or for some months—a number of months prior thereto, how far had the slope been driven?

A. They were somewhere near here, because in 1935 when I went there I found the face of the main slope at approximately this point, and so they were somewhere in the immediate vicinity of this point.

Mr. Bronaugh:

Identify that point, please, sir.

Q. At what entries, near what entries?

A. Well, in 1935 it was approximately at 85; 1934 say approximately 200 feet less than that; say 82 to 83.

Q. Now, at October, 1934, and for a period before that time did you have a bath house or change facilities at this mine?

A. Not designated as the bath house in the common sense that one bath house serves the whole plant, but we had bath house facilities—

Q. When I said 1934, I meant 1938, and I wanted to ask you another question on that. I was getting at the date of the passage of this act. I am asking you about the facilities there for the change in the latter part of 1938 and prior to that time.

A. There was no common bath house at which all the men changed in the same building. There were facilities available, however, for a large part of the men in the basement of the engine room, basement of the compressor

house, and an abandoned hoisting house at Number 1 slope over there, and one or two other buildings not in use.

Q. Now, can you tell us to what extent the men used those facilities for changing clothes?

A. All the white men, I believe, used them, and I would say approximately 50 percent of the colored employees used them.

Q. That is in 1938?

A. Yes.

Q. And for how long prior to that time had that existed?

A. Well, that condition was there in 1935 when I went there. I don't know how long it went on before 1935. During—

Q. But from 1935 to 1938 it existed?

A. Yes, sir.

Q. And since 1938?

A. Up until recently, when other facilities have been provided.

Q. You mean you have a central bath house now?

A. We do.

The Court:
What is your answer?

The Witness:
Yes.

The Court:
Since when?

The Witness:
Put into operation the first of the month.

The Court:
All right.

Q. Now, how far were those change facilities from the mouth of the mine?

A. Well, the nearest was directly under the hoist house, which would be a couple of hundred feet away, and the furtherest was at the Number 1 hoist house, which would be approximately a half a mile away.

Q. All right.

The Court:

You mean away from two—away from—

The Witness:

Away from the entrance to Number 2 slope.

Q. Now, when the men came to the entrance of the mine to go down—prior to—I am asking you around 1938, —what was the practice with respect to taking the men down?

A. You say taking the men down or checking them—

Q. Yes, down into the mine, taking them—

A. When the men came to the pit mouth, they call it, the man trips were lowered to the 48 yard and from 48 yard, prior to 1938, they walked to their working places.

Q. They walked to their working places, wherever that was?

A. Yes, sir.

The Court:

From the 48 yard?

The Witness:

Yes, sir, the foot of the main slope.

Q. Now, can you point out the 48 yard there and state how far that was down?

A. It was approximately 4000 feet from the pit mouth, and it was at this point here, right there. (Indicating on

Sloss Exhibit No. 10.) They rode from this point to this point here.

Q. And from that point they walked to wherever their working place was?

A. Yes, sir.

Q. Now, what sort of facilities did you have for taking them down? What sort of trip did you take them in?

A. Prior to 1938 we had designated man cars, which were built on the same undercarriage on which the ore cars are built, but they were built longer and seats were provided—were provided on there on which five men sat on each side of the bench and faced outward with their backs against five men on the opposite side. Each car held ten men.

Q. How many cars in the trip?

A. At that time there were six.

Q. So, as I understand, you did not use the ore skip for carrying men?

A. We did not use the ore cars. There were no skips employed at these mines.

Q. You did not use the ore cars?

A. No, sir.

Q. Those cars were made for the men to ride in?

The Court:

How many of those did you say you carried at the time?

The Witness:

Had six cars; ten men.

The Court:

Six cars, ten men to the car, each trip?

The Witness:

Yes, sir.

Q. Mr. Costner, can you give us some idea about the dimensions of those cars?

A. They are approximately 10 feet long and they were mounted on 14-inch wheels, and the overall height of them would be approximately 38 inches. The width would be approximately 38 inches—36 to 38 inches.

Q. The width—I am walking about your floor surface, how much was that, your width and your length? I want to get that particularly, the width and length?

A. I say the width would be nearer 48 inches instead of 38 inches, and the length would be approximately ten feet.

Q. Ten feet?

A. Each man would have space approximately of two feet on which to sit.

Q. Would that car seat, as far as crowding is concerned,—I am not talking about whether the seats were soft or hard, but so far as crowding was concerned, would it take care of ten men comfortably?

A. Yes.

Q. Now, you spoke of the height. You mean the body of the car?

A. I meant from the top of the rail to the top of the seat support or seat back.

Q. Seat back?

A. Yes, sir.

Q. So the men could sit down to ride?

A. Yes, sir, they did.

Q. Now, with respect to that ride, Mr. Costner, something has been said here about changing those seats to accommodate some steep places in the mine.

A. There was no change made to accommodate any mine condition. We did, however, about sometime in the early part of 1939 redesign those cars due to the fact that the cars were getting in condition they required extensive repairs, so we built a better and more com-

fortable car for the men at that time. The capacity of the car remained the same.

Q. All right. Was there any difference in the pitch to take care of any grade or anything of that sort?

A. The original car was built on—As I am holding this rule here on the pitch of the slope, the new car has seats cut out and built on the pitch of it so each man sits in a horizontal position riding down on the slope, as he did prior to the installation of these particular cars, but these cars were not added as the result of any condition in the mine that made it necessary to install some cars to take care of those conditions.

Q. Now, where in this mine have you got a hill here that the men go around instead of walking over the incline?

A. At the present time the men do not go around—

Q. Where is that point in the mine?

A. It is known as 55 hill. It is a point 500 feet in by the return trip from the surface on the main slope.

Q. Where is that now; opposite what heading is that?

A. Opposite 55 left heading, and here is the peak or top of the hill. You notice here these entries are driven around the side of the hill.

Q. From where to where? Indicate it.

A. From the bottom here, which would be at 48 yard to some point beyond 55 hill, which would be on down as low as 62, the ore is humped, so to speak, in the middle, and if you can imagine, say, an orange—you had to travel over—if you had an orange or ball you had to travel over, rather than go over this hump and come back over on the other side, you can follow around this thing and come back on the other side.

That condition was present right in this particular area before man trips were operated on this slope, where the men would walk around this side rather than climb over this steeper point right here.

Q. Now, did you have occasion—was it necessary for you to haul ore and for your ore cars to pass that identical point?

A. Yes, sir. The haulage road for ore is driven on the shortest, most direct route regardless of grade, and for that reason the slope came straight on over this bank or high point here.

Q. Yes.

A. We had a hoist set up on top of this bank that picked cars up on the low side and pulled cars around here and dropped them into a wye at the foot of this hill where another engine took them to the surface.

Q. Referring to a question asked on cross examination of Mr. Harper with respect to the process of haulage of ore from the nuck to the top, inquiry was made about how many changes were made from a direction—whether that was a direct trip or whether there were several operations involved. Can you answer that question?

A. Yes, there are several operations involved, due to the hilly, rolling nature of the ore seam; the grades are undulating; you go down and up like this. It is necessary to handle some ore as many as five times,—ore cars, I mean, from the time it is loaded until it reaches the surface.

Q. I will ask you, Mr. Costner, with respect to these indulations you find in the Sloss Mine, is that greater in degree than it is in other ore mines or rather in the ones you have been in and know?

Mr. Harris:
We object.

The Court:
I don't know that is material, Mr. All.

Mr. All:
I didn't know—

The Court:

It doesn't make any difference.

Q. That is due to the natural dip of the ore, is it?

A. Right.

Q. Now, you have stated here that you came—when you came over there in 1935 and prior to 1938, that your man trip ran down to about 48?

A. Right.

Q. Now, I will ask you whether or not at the present time and for some time in the past, whether or not there is another interval of haulage of the men?

A. Yes. The men get off this top slope at 48 yard, the same point at which they have unloaded for a long, long time, and now walk approximately 500 feet to the 55 nuck or 55 wye, we call it. There they board another man trip at this point and ride down to 74 yard, approximately 2000 feet.

Q. That is a 2000 feet ride?

A. Right.

Q. Now, what was the occasion for the installation of the second man haul?

A. That was put in at the request of representatives of the employees, who asked that we haul the men this additional distance, which we agreed to do so.

Q. Was that in process of negotiation?

Mr. Harris:

We object to what it was in process of, if the Court please.

Q. When was it asked, the occasion of the request you spoke of?

Mr. Harris:

We object. He has stated there was a request.

The Court:
Just a minute. When was that change made?

The Witness:
1939.

Q. I will ask you in what form the request was made and by whom it was made.

Mr. Harris:
We—he said the request of the men, I believe, a moment ago, and we object to who made the request, if the Court please.

The Court:
Your question is not specific, Mr. All.

Mr. All:
I am trying to avoid leading.

Q. I will ask you was it made by any committee or anybody representing the men,—

Mr. Harris:
We object.

The Court:
Overruled.

Q. —and if so, what committee was it?

A. It was made by the regular plant committee in the form of regular negotiation at the Sloss plant office.

Q. At the Sloss plant office?

A. Yes, sir.

Q. What organization was that mine committee representing? Who did it consist of?

A. They were the committee of the Local 109, International Union of Mine, Mill & Smelter Workers.

Q. That is all right. Now, Mr. Costner, when the men went to what you call the pit mouth—I want to ask you this question: In connection with your extension of your haulage there, when you say that was done at the request of the committee of the men, committee of the—

The Court:

You have been over that.

Mr. All:

Well, I am introducing another question.

Q. Did they ask to be paid for the travel time at that meeting?

Mr. Harris:

We object to that, if the Court please.

The Court:

Overruled.

A. They did not.

Q. They did not?

A. No, sir.

Q. All right. Mr. Costner, all your underground men used carbide, didn't they?

A. Yes.

Q. Used carbide lights?

A. Yes.

Q. Now, at 1938,—I am getting at the time and you give the inclusive dates,—at 1938 and prior to that time and since that time through 1938 where was that carbide secured by the men?

A. Usually at the company commissary but also at any point the miners desired to purchase it.

Q. Did they bring it with them in the morning, wherever they got it?

A. They did.

Q. Were they required to get it at the company commissary or from the company at all?

A. They were not.

Q. And they took that with them on the trip down, the carbide?

A. Right.

Q. Now, was there anything else that the men took down from the pit mouth where they caught the trip down to the point where they were unloaded?

A. As a general rule, no.

Q. As a general rule, no. Now, where were the supplies that the production men used at their places of work?

A. They would be delivered to the working face at their request.

Q. How did they make that request?

A. They would ask the section foreman or probably notify the chainer they did need some particular item or supply. That was the general rule. There would be some exceptions to that rule.

Q. All right. When that requisition or request was honored, what employee or employees did the work of delivering it at the working place?

A. Some member of the service crew, usually the chainer?

Q. Where were the supplies kept, first?

A. Well, at the slope bottom there was a box of—

Q. I am talking about before they were delivered down in the mine. Did you have a surface supply house?

A. Yes.

Q. Where was that?

A. It was nearer Number 1 slope than it was Number 2 on the surface.

Q. How were these supplies taken from the supply house to the pit mouth?

A. By truck.

Q. By truck. Now, what men took them there? Were they surface men or men whose business was underground?

A. Always surface men.

Q. Always surface men?

A. Yes, sir.

Q. When it was taken to the pit mouth what was done with it?

A. They were loaded in the ore car by the tipple surface crew and sent underground, and it might be they would be sent to the particular place that requested them without being unloaded at the bottom. If that particular trip was not going to the particular place where the supplies were needed, the chainer would unload it and load it into other cars that would be going into the section where the supplies were needed.

Q. What supplies are you speaking of? Are you speaking of all the supplies and appliances the miners used?

A. Appliances, yes. I am not speaking of explosives.

Q. I am speaking of tools.

A. It includes tools.

Q. And you include all tools they use?

A. Right.

Q. Now, with respect to powder, where would—where was the powder kept?

A. The powder was delivered to the surface by the explosive company from whom it was purchased, and placed into regular powder cars. These cars were locked and kept on a spur track on the surface until the evening shift, at which time it was carried underground to the magazine and by service men placed within the magazine in the mine.

Q. Now, where was that magazine, at what point in the mine?

A. There are two of them. One is at 62 left, which has not been used for several years, and the present magazine is at 78 right, both on Number 2 slope.

Q. Now, where—how does that powder—how does that powder get to the working place of the production crew?

A. One member of the crew is designated for the purpose of transporting the powder from the magazine to the working place. This man is the drill helper. He gets the powder at the magazine and puts it in a bag or sack and carries it into the working place.

Q. Now, what kind—Is that powder sticks of dynamite?

A. Yes, sir.

Q. It is in sticks, is it?

A. Yes, sir.

Q. Now, how much is taken at once,—at a time?

A. Nearly always a 50-pound case; in rare instances there might be two cases.

Q. But ordinarily one case?

A. And at times two.

Q. Now, what times does that man get the powder from the powder house?

A. At seven o'clock. At work time.

Q. In the morning?

A. Yes.

Q. Is seven o'clock work time?

A. It isn't now.

Q. That is when work commences?

A. It isn't now.

Q. I mean was it work time in 1938, prior to that time and since that date—

A. Yes, sir.

Q. Up to May 1, 1941?

A. Yes, sir.

Mr. Harris:

We object to what was work time. He might tell what happened at seven o'clock, but what is work time is a conclusion.

The Court:

Let him state when they started and ended.

Q. What is the time when the production man went to work?

Mr. Harris:

That is the same question. The question is when he went to the mine and when he went down.

The Court:

No; confine it to when he worked.

Q. Where and when did his work day commence?

Mr. Harris:

We object to that, if the Court please.

The Court:

Overruled.

A. For the day shift at 7 o'clock. Did you say where?

Q. Yes, sir.

A. At his place of work at the face.

Q. That is the production men?

A. Right.

Q. What about the underground service man; where did his work commence?

A. At his place of work also, which might vary from day to day, depending on what work he was performing, but always at his place of work.

Q. But always at his place of work?

A. Yes, sir.

Q. What time did he commence his work?

A. Seven o'clock.

Q. You say the man got to the powder magazine at 7 o'clock?

A. The man that got the powder.

Q. Got the powder at seven o'clock?

A. He might have gotten there a few minutes before, but the powder was issued at seven.

Q. State whether or not the man got the powder usually on his way down to work?

A. Always.

Q. What if that man got late to his working place?

A. He was always late.

Q. Always late?

A. He got his powder, and it would time sometimes twenty or thirty minutes possibly after he got his powder to get to the place where the rest of the crew was at work.

Q. Well, he got the powder, as I understand you, then, after the shift began working?

A. Right.

Q. And within his work time?

A. Right.

Q. Yes, sir. Now, about the oil—

A. The oil—prior to 1938—

Q. Prior to 1938 and up to 1938 and since that time up to May 1, 1941?

A. Well,—

Q. If there is a difference in the custom from the time you got there in 1935, you can indicate the time and change.

A. There is no difference in the method of dispensing oil to the men that use it. There is a difference in the point at which they get it as compared to a few years ago.

Q. All right. When you say now you mean prior to May 1, 1941?

A. Right.

Q. All right. Well, just tell us when and where they got it and how they got it.

A. Several years ago there was oil stationed on the 48 yard that—to which drums of oil were brought from the surface and emptied into the oil tank.

Drill men coming out of their place on the preceding afternoon would leave an oil container at that point, and on the way back to work the next morning they would pick up a can of oil that they filled and carry it in to their working place.

Q. How many men in a crew would get the oil for the crew?

A. One man.

Q. One man? What size container did they take that oil in?

A. Usually a one-gallon oil can.

Q. Did you state he got the oil himself out of the tank?

A. Yes, sir.

Q. And took it—

A. Yes, sir.

Q. —to the working place?

A. Yes, sir.

Q. What time would that be done; what time did he get that oil?

A. He would get that after he unloaded from the man trip and on his way to the working place.

Q. And on his way to the working place?

A. Right.

Q. That was a gallon of oil?

A. Never over that; lots of times less.

Q. How long would a gallon of oil ordinarily last a crew?

A. That would depend primarily on the condition of the machine he was using, but normally possibly an ordinary hand crew would require oil every other day or twice a week.

Q. Twice a week, so that process of a man getting oil was not daily?

A. No, not for any individual man. Somebody got oil every day.

Q. I know, but I mean take it for the crew, was it daily for the crew, even? Did every crew get as much as a gallon of oil evey day?

A. No. They would get oil every other day, or possibly twice a week.

Q. What you mean to say, maybe somebody in one crew would get a gallon of oil today and somebody in another crew would get oil the next day, so there was hardly a day somebody didn't get oil?

A. Correct.

Q. Is that what you meant to say?

A. Yes, sir.

Q. Now, did you use in your drilling hangers or in your loading?

A. Machine loading crews required them.

Q. Who used a hanger? Sir?

A. Machine loading crews required hangers. The others did not.

Q. The others did not?

A. No.

Q. What about the wedges?

A. Wedges are required where hangers are used.

Q. And not required where hangers are not used?

A. No.

Q. So the hand loading crews did not require wedges?

A. No.

Q. Or hangers?

A. No.

Q. What would be the size of the wedges?

A. They would be approximately five or six inches long and possibly a half an inch thick at one end, and taper to nothing at the other end, and approximately an inch and a half wide.

Q. How much would a wedge weigh?

A. I would say half a pound.

Q. How many wedges were used to a hanger?

A. I would say two.

Q. How many hangers—in those mechanical loading places how many hangers were ordinarily used?

A. Only one is used at a time, but for convenience the men might put up as many as three or four for their own personal convenience.

Q. You mean as a matter of reserve?

A. No, just for the convenience to the operators. You might locate one here and move over six or seven feet and put another one up if he wanted to and if he had the hangers. Otherwise, he would have to take the hanger down and shift over if he was using the same hanger.

Q. So, while one was being used the others were idle?

A. Only one at a time could be used.

Q. Now, when were these hangers and wedges taken to the working place ordinarily?

A. When the man who needed it would request delivery of one.

Q. Who was it delivered at the working place by?

A. By service crews.

Q. By service crews?

A. Usually chainers.

Q. On company time?

A. Yes.

Q. Do you know whether or not at times the man would take such a thing as a wedge down himself while he was going into the mine?

A. Yes, they have done that.

Q. They have done that?

A. Yes.

Q. How do they take them?

A. Put it in their pocket.

Q. Put it in their pocket?

A. Yes, sir.

Q. Is it burdensome?

A. No; small piece of iron about that long (indicating).

Q. What about the hanger?

A. Well, he wouldn't put that in his pocket. That is about, maybe, as long as this rule, not hardly so long, made out of one and one-half inch square steel at one end and tapered to the other end. It would weigh probably a couple of pounds, two or three pounds.

Q. How long would a hanger last ordinarily?

A. It would depend on the particular crew and the location where it was being used. Normally one would last a week or ten days before it would become bent or lost or broken. On the other hand, some other crew might require one every other day possibly.

Q. What about the wedges?

A. About the same relationship as to the hangers.

Q. About the same thing?

A. He would probably use more wedges than he would hangers, probably would.

Q. Did you use in drilling at Sloss detachable bits?

A. Not as a common custom. We have experimented with detachable bits in that mine, but never in more than just one place.

Q. You have never used them consistently—

A. No, sir.

Q. In the mine?

A. No, sir.

Q. Where are your—ordinarily when the tools are first taken to a working place—when originally taken to

the working place, how are they taken there and by whom?

A. They are taken in on empty ore cars by service men and unloaded in that place by these men—

Q. All right.

A. —or, if the car goes directly into the face without being handled anywhere else, the man that is using it would probably unload it at his place.

Q. At his place?

A. Yes, sir.

Q. Besides what you have mentioned, is there anything else that the men take down themselves on occasion besides what you have mentioned?

A. As a common thing I know of nothing else. Of course, there might be some instances where a man might take something else like an electric light grobe or something of that sort, and he can have delivered, though, to his place anything that is needed for the operation of his place.

Q He can do what?

Mr. Harris:

We object to that. That was a voluntary statement, not responsive to the question.

The Court:

Sustained.

Mr. All:

Judge, did you rule on that?

The Court:

Sustained.

Q. I will ask you if a man cannot have, by request, anything he needs at his working place delivered by the

company through service men or other men working on company time?

Mr. Harris:
We object to that.

The Court:
Overruled.

Mr. Harris:
Time of delivery and delay involved—

A. He can.

Q. All right: I will ask you whether or not any of these things such as you have spoken of that you say the man on occasion may take down, if that is voluntary on their part?

Mr. Harris:
We object to that, if the Court please.

The Court:
Well, you mean carry things?

Mr. All:
Yes, sir.

The Court:
You mean supply them?

Mr. All:
The question is whether they are required or whether they do it voluntarily on their own part.

Mr. Harris:
We object.

The Court:
Ask him if they are required to do it.

Q. Are they required to take any of these tools or appliances into their working places?
A. They are not.

The Court:
Are they required to take oil?

The Witness:
No, sir. They could have that delivered if they wanted to wait for it. It is the usual custom, though, they do carry it.

The Court:
We will take just a few minutes recess.

(Thereupon proceedings were in recess from 3:00 P. M. to 3:10 P. M., when proceedings were resumed as follows:)

Mr. All:
If the Court please, I don't know whether I finally introduced this map, but I want to introduce it.

The Clerk:
Yes, you offered it, Sloss Exhibit 10.

The Court:
The map is in.

Q. Will you put up this map of the Ruffner mine, please?
A. Yes, sir.

(Thereupon witness places map on blackboard.)

The Clerk:
Do you want to introduce that at the time?

Mr. All:
Let's see. Mark that—

The Clerk:
That will be Sloss Exhibit 11.

Mr. All:
—Sloss Exhibit 11.

(Thereupon a map entitled "Map of Ruffner Ore Mine, Sloss-Sheffield Steel & Iron Company, Birmingham, Alabama, scale 1 inch equal 100 feet," was marked Sloss Exhibit No. 11.)

Q. Mr. Costner, do you know something of the history of the Ruffner Mine of the Sloss Company?

A. Yes, sir.

Q. When it was operated and when it was closed down and when there was a resumption of operations?

A. Yes, sir.

Q. Well, tell us.

A. The mine was originally—Ruffner Number 2, the mine which is in operation there now, was originally opened in 1910 and worked until 1929, at which time operations were discontinued. The mine remained idle until 1940. In July of last year production was again resumed in that mine.

Q. All right, sir.

A. That followed a period of approximately one year in rehabilitating the property and making it ready for operation.

Q. And covering a part of what time, what year?

A. '39 and '40 the mine was being put in shape to operate.

Q. Do you know when—

A. It actually began operations in 1940, in July.

Q. July, 1940, is when production began?

A. Yes, sir.

Q. Actual production?

A. Yes, sir.

Q. You say Ruffner Number 2. Does that map show any other opening?

A. No, sir.

Q. Will you point out the slope?

A. That is the entrance to the mine slope, which is driven about a 10 percent slope approximately 4000 feet. The slope is stopped at approximately this point (indicating on Sloss Exhibit Number 11.)

Q. Will you indicate by some word, or point out where is the mouth of the slope of the mine?

A. There it is right there opposite the word "Portal".

The Court:
What word?

The Witness:
Portal.

Mr. All:
Opposite the word "Portal".

Q. Now, how far had that slope been driven when operation of that mine was discontinued in 1929?

A. As shown on the map here just a little bit below 49 left. The slope has not been driven since—

Q. Has the slope been extended any since the work has been resumed?

A. No, sir.

Q. Now, the property beyond where the slope has been driven,—does that below to the Sloss Company?

The Court:
What difference does it make?

Mr. All:
Well, I just wanted to show—to get at the picture. I want to show whether they have or have not any prospect of operations there.

The Court:
Well, I don't think that has anything to do with the case.

Q. Now, where—now, will you point out the present workings of Ruffner, Mr. Costner?
A. All the places colored in red.
Q. Are working places?
A. Are working places now.
Q. All the places colored in red?
A. Yes, sir.
Q. I notice there are some diagonal lines here in red starting near the pit mouth and running diagonally. What are these?
A. That indicates a haulage route that is driven across the old headings, the old workings. The old workings were driven years ago, but this colored in red has been driven since July of last year for the purpose of concentrating your haulage system to one central haulage engine on top.
Q. Are those haulage ways yet in use?
A. They are.
Q. The red indications on those haulage ways, what do they indicate?
A. The point indicated in red is a pillar of ore. This point colored in red indicates the haulage ways have been cut through those pillars and we have robbed out the ore to get the haulage ways.
Q. You have cut through those pillars?

A. We cut through them, yes.

Q. When operations were resumed, at what points did you run a mantrip if you ran a mantrip?

A. You mean after operations were resumed?

Q. After operations were resumed, yes.

A. The lowest point we ran a mantrip was 21 left, but we stopped that mantrip at 14 right and the men working there—

Q. Let's get that so we can indicate it. You had a stop for the mantrip at what heading?

A. The first point was 14 right.

Q. The men that got off there--why did some of the men get off at that point?

A. These were the men that worked at some of the places shown in red at that point.

Q. Shown in red to the right going down the slope?

A. Right.

Q. Looking down the slope?

A. Yes, sir.

The Court:

How far was it from the landing place to the points where they worked?

The Witness:

About a thousand feet.

The Court:

Walked?

The Witness:

Yes, sir, walked about a thousand feet.

Q. How far is that place where they unloaded from the pit mouth?

A. Around 13 or 14 hundred feet.

Q. Now, your next stop is where?

A. At 21 left,—there (indicating on Sloss Exhibit No. 11).

Q. Now, what men got off at 21 left?

A. Those men working in this section here shown in red.

Q. How do you indicate those sections in red you have just pointed to? Are they to the left of the slope?

A. They are to the left and are called the 21 slope places.

Q. They are to the left and are called 21 slope places?

A. Yes, sir.

Q. I notice to the right of the slope some working places about opposite 24 and 25, right. Where do the men get off who go to those places?

A. Until a few months ago those men got off at 21, but now the trips run further down the main slope and they unload at the mouth of 26 right.

Q. Right here?

A. Yes, sir.

Q. How far is it from the unloading point for the men who worked in these left working places,—in these working places to the left of the slope from the place where they unload?

A. The maximum, 1100 feet.

Q. Now, that is the largest concentration of working places you have over there as indicated by the map, is that true?

A. Absolutely true.

Q. Now, how far is it from that unloading point to these working places about opposite 24 and 25 to the right?

A. About 500 feet.

Q. About 500 feet. All right. Now, where did the men get off the man trips who worked in these working places down near the bottom of the slope?

A. At the present time they get off at 37 left,—this point there. Prior to a few months ago they got off at 21 and walked to there.

Q. All right. When they got off at 21 and walked to their working places approximately how far did they have to walk?

A. 1200 feet.

Q. How far do they have to walk now?

A. To the face of each place is approximately four—not over 500 feet.

Q. Now, you testified, Mr. Costner, about the layout and method of mining employed at Sloss at Bessemer. Could you point out the differences, if any, in the general mine plans at Ruffner and Sloss?

A. This mine here has only been in production part of—well, one year exactly now, and none of the places are driven to the property line and no pillaring is done in this mine. All the work in this mine is development work, practically all of it, with the exception of winding up some of the old work that was left when the mine was closed down, so there is very little stopping done in this Ruffner mine at the present time. Most of it is development work, driving headings and so forth. At Sloss practically all the work is stoping or pillaring with some heading driving.

Q. Now, where are the changing facilities at that mine? I mean changing clothes facilities, corresponding to what has been spoken of in this hearing as a bath house?

A. It is shown on the map at this point right there, which is approximately five or six hundred feet from the mine entrance on the surface.

Q. On the surface?

A. Yes, sir.

Q. How many men are working in that mine?

A. About 165—no, 165 work at that plant. Only about 120 odd of them work underground.

Q. 120 of them work underground. Of that number, how many are production men and how many service men?

A. Production, approximately 90 men, and service men would run around thirty or forty.

Q. What sort of lights do the men use at Ruffner?

A. Electric battery lamps.

The Court:

What kind? Electric?

The Witness:

Electric, yes, sir.

Q. Where do the men get their lighting facilities that they use there?

A. There is a lamp house built immediately adjacent to the portal, the mouth of the mine. They are issued a lamp there as they go in the mine.

Q. Well, what does that consist of, what they deliver to them?

A. What does the lamp consist of?

Q. Yes.

A. There is a battery with a rubber cable approximately three feet long connecting the battery to the head lamp in which there is a globe; looks like a miniature automobile headlight.

Q. How are they carried?

A. It has a hook for attaching to the cap just like a carbide light.

Q. So, instead of the men carrying a carbide light as they do at Sloss, at Ruffner they have different lighting facilities?

A. Yes, sir.

Q. Who furnishes that light?

A. The company furnishes the light. The men pay a rental for the use of it.

Q. Now, what about the supply house at Ruffner, and I am speaking for the entire period now, up until May 1st, that that mine has been in operation the last time?

A. The supply house is located on the surface approximately halfway between the bath house and the portal, and would be approximately 300 feet from the mine entrance.

Q. Is there any difference in the tools that are used in the working places of the production men from those used at Sloss?

A. Yes. Drilling at the Ruffner mine is off of columns, whereas at Sloss it is off of tripods, and at Ruffner the men use detachable bits, and smaller drill steel. Those are the major differences.

Q. All right. Do you have mechanical loading there?

A. Yes, sir.

Q. To what extent?

A. We have five sets—small sets in comparison with those found at Sloss.

Q. How do you—the number of handloading crews compared with the number of mechanical loading crews—

A. We have five mechanical crews and at the present time we have about maybe 15 handloading crews at the present time. Those have been increased.

Q. Do you use the same sort of hangers and wedges in the working places where you use the drag?

A. Yes, except the hanger may be a little longer than the one used at the other mine.

Q. What about the wedges?

A. The same.

Q. All right, sir. Now, who moves or takes the drilling apparatus and the tools that the production men use to their working places at Ruffner?

A. With the exception of the bits, all the stuff is delivered to the men. The driller gets his own detachable bits.

Q. The driller gets his own detachable bits?

A. Yes, sir.

Q. How long does a bit last?

A. One bit might last him a week, depending on what kind of conditions he is drilling in. On the other hand, he may want to change his bit every day for a while.

Q. What is the size of those bits, and the weights?

A. A set of five, which is the number used, would weigh approximately two pounds.

Q. What size are they?

A. In actual size they are an inch and a half.

Q. How are they carried by the men?

A. He has a wire, and they are strung on a wire, and he carries this by a loop the same as you would a bucket of water.

Q. Where does he get those bits from?

A. You mean now?

Q. From the time the company started operating, prior to May 1st?

A. Prior to May 1st he got them off a board at the shop approximately 300 feet from the pit mouth. Since May 1st he gets them off a board at the pit mouth.

Q. At the pit mouth?

A. In the lamp house.

Q. Are those bits brought out; are they repaired or sharpened or anything down to them, or are they discarded?

A. Both. If they are in such shape they cannot be used, they are discarded, otherwise, they are sharpened and fixed so they can be used again.

Q. You say with that exception all the other tools are taken to the working places by the company?

A. Right.

Q. Is that through other men on company time?

A. Right.

Q. That is correct, is it?

A. Yes, sir.

Q. Now, what about the powder? How is the powder gotten to the working places there?

A. The drill man or head miner tells the clerk on the surface what powder or the amount of powder he needs.

This powder then is delivered at the—upon the instruction of the clerk by the truck to the pit mouth and is loaded by company men or service men into mine cars and delivered at the face where the man uses the powder.

Q. So, then, all the powder is delivered at the working place there?

A. Right.

Q. Yes, sir. Now, what about the oil?

A. We have a system similar to Sloss in what we have a tank located adjacent to the pit mouth. The miner gets his oil on the way into the mine and carried it down with him.

Q. Now, what time does he get it?

A. What time?

Q. Yes, sir.

A. He gets it on his way to the portal, which would be before seven o'clock.

Q. Before seven o'clock?

A. Yes, sir.

Q. What time—what is your time for beginning work for the production men and the inside service men at Ruffner?

A. Prior to May 1st it was 7 o'clock at the working face or place.

Q. Wherever that was?

A. Yes, sir.

Q. What time do these production met get the oil?

A. He would get it between 6:30 and 7:00 o'clock on his way to catch the man trip.

Q. No, is it or not true that one man does that, one man in a crew?

A. That is the proper proceeding.

Q I mean it doesn't take but one man in a crew to do that?

Mr. Quinn:

We object, if the Court please. Let him state how they do it.

The Court:
Overruled. He had already answered it.

Mr. All:
Well, I think he probably had.

Q. Now, is there anything that the service men, the inside service men take to their working places from the surface except the light or lighting system, carbide at Sloss and the lamps such as you have described, at Ruffner?

A. No.

Q. Nothing at all?

A. No.

Q. How many—going back to Sloss for the moment, how many men do the company employ as inside men at Sloss Mine?

A. There are approximately 230 men on production, and approximately 130 or 135 on service.

Q. You mean inside service?

A. Underground.

Q. Whose working time starts underground?

A. Right.

Q. Is that right?

A. Yes, sir.

Q. Is it or not true at Sloss, as you have just stated with respect to Ruffner, that the underground service men at Sloss never take anything into the mine except the carbide?

A. Possibly some pocket tools, something that will go into the pocket.

Mr. Harris:
I thought he went into that.

Mr. All:
I just left that one out. I just asked about the service crews and carbide.

Q. Is that occasional or with any regularity?
A. Occasional.
Q. Mr. Costner, I am—

Mr. Harris:
Let's see it.

(Mr. All hands paper to Mr. Harris.)

The Court:
How is the surface in the Sloss Mine where these men work and walk?

The Witness:
You mean the walking surface?

The Court:
Yes, sir, from where they get off the trip and go to where they work.

The Witness:
You mean is it slippery or rough?

The Court:
Yes, is it slippery or smooth?

The Witness:
It isn't in the sense it is slippery or unbroken.

The Court:
Is it like a railroad?

The Witness:
That is what it is, a small, narrow gage railroad.

The Court:
Between the rails have you got anything in there that—have to got the cross ties?

The Witness:
We have got the cross ties and there is an accumulation of ore dust over these things so there is no difficulty for a man to maintain his footing at any point on there.

The Court:
What is the grade outside of where you go around that hill you talked about?

The Witness:
They vary from 20 degrees to flat.

The Court:
What about Ruffner, with reference to the condition of the track?

The Witness:
There are no man ways open for travel at Ruffner. They are there, but the mine was filled with water until a year ago, and these old workings are more or less muddy and filled with silt deposited by the water, but the part the men travel is not slippery and very good walking. There is no difficulty in walking at any point in the mine.

The Court:
What degree of incline?

The Witness:
About ten percent.

The Court:
Is that going to work or coming from work?

The Witness:
It is downhill to work. I would like to add this: That where these men unload in the mantrip they walk out

on a horizontal plane almost. They get off at the slope and walk out on a water level, the majority of them. Some few of them do walk on this pitch.

The Court:
Are you ready?

Mr. All:
Yes, sir.

The Court:
Go ahead.

(By Mr. All):
Q. Mr. Costner, I am handing you here three sheets that are fastened together. The first two seem to have been fastened, and then the third sheet fastened to the other two. I will first ask you about what the first two pages are—

Mr. Harris:
Now, Mr. All—

Q. —or the long sheets?

Mr. Harris:
—I notice he has made a memorandum, or somebody has made a pencil memorandum on the first sheet, and on the last sheet, if that is the one you showed me.

Mr. All:
Yes.

Mr. Harris:
Of course, they were not handed to him with the memorandum on them.

Mr. All:
No.

Mr. Harris:
The memorandum would be a self-serving declaration.

Mr. All:
It couldn't be a self-serving declaration unless it were in his favor.

The Court:
You are not insisting on it?

Mr. All:
I am not insisting on it at all.

Q. What are these first two pages?

The Court:
Not shown he made the memorandum?

Mr. Harris:
They speak for themselves.

Mr. All:
I can't show it yet. There are two—

Q. Did you make this memorandum on this first page and on this lower sheet, the next one?
A. I did.
Q. I will ask you about these first two pages in typewriting, the long pages typewritten, what is that?

Mr. Harris:
Wait a minute. It speaks for itself.

Q. Was that given to you or handed to you by anybody?

A. It was.

Q. When?

A. On August 3, 1938.

Q. By whom?

A. By the Mine Committee at the Sloss Ore Mine.

Q. Who was that committee, do you remember?

A. The members of the committee?

Q. Yes.

A. There was John Hill, O'Neal, Jesse Gaines,—that is all I remember now.

Q. Do you know whether they were—they were the Mine Committee; do you know whether they were connected with any union or not?

A. They were the local representatives of Local 109, International Union of Mine, Mill & Smelter Workers who handled relations between the Union and the company as representatives of the Union.

Q. You say they handed you these first two sheets?

A. They did.

Q. Now, how many paragraphs are on that sheet?

A. Thirty, I believe.

Q. Are they numbered?

A. They are.

Q. Thirty?

A. Yes, sir.

Q. Now, was that signed when it was handed to you, or is this the identical paper that was handed to you?

A. That is the identical paper.

Q. It has got thirty paragraphs in it?

A. Yes.

Q. Now, the other on this sheet, in typewriter at the top, paragraph Number 31, and the memorandum, when was that handed to you?

A. On August 18th by Mr. O'Neal at the Sloss Blacksmith shop.

Q. All right, sir. Did he say anything to you when he handed you that later paragraph?

A. He asked me to affix this to the original paper that had been given me before August 18th and informed me that this item 31 had been left off the original proposal, and they wanted to include it for consideration.

Q. All right. The other thirty being the paragraphs on the first two pages you had before you?

A. Right.

Q. Is that right?

A. Yes, sir.

Mr. Harris:

I couldn't hear that question. You were in a foot and a half of the witness and he talked a little low.

Mr. All:

I asked him if the other thirty grounds he wanted this added to was this paper.

We offer that in evidence and substitute a copy.

The Clerk:

Sloss Exhibit 12.

(Thereupon a document consisting of 31 numbered paragraphs, the first being "That all employees of Sloss Red Ore Mines be given a 10 percent increase in pay," and the last, or 31, being "That the company shall deduct from all employees on contract labor a nominal sum, the same to be paid to the check weighman," was marked Sloss Exhibit Number 12.)

Mr. Brodie:

Is he offering that in evidence?

The Clerk:

He has.

Mr. Brodie:
May I interpose an objection to that, Your Honor?

The Court:
Yes, but it is overruled.

Mr. Smith:
Mr. All, just what does it purport to be?

Mr. All:
I am going to let you read it.

The Court:
It speaks for itself.

Mr. All:
I am going to give you a copy. If I asked that question somebody would object.

Mr. Harris:
I would.

Mr. All:
Mr. Harris would, and I think the best way out of it is to give you a copy.

Mr. Smith:
All right.

Q. Following the presentation of these papers, Mr. Costner, did you have any negotiations with these men?
A. We did.
Q. Do you remember how many times you met them?
A. We met them twice before we signed a contract.
Q. Now, what—did you reach an agreement with them?

A. Yes, sir.

Q. Who was with you as representing the Sloss Company in those negotiations?

A. Mr. Roy Ratliff, and Mr. Russell was present,—Joe Russell.

Q. Who was—I mean—you say you reached an agreement?

A. We did after about two other meetings.

Q. Now, in those meetings, Mr. Costner, were the matters that were set forth in this Sloss Exhibit 12 the subject matter of discussion?

A. They were.

Q. They were, and you say after two or three meetings or two meetings, whatever you said, you reached an agreement?

A. Two meetings; I believe we signed on the third meeting.

Q. All right, sir. Now, in the—in those discussions was there any mention made or any suggestion made by the representatives of the employees or the representatives of the union with respect to the matter of worktime commencing at the usual place of work or at the pit mouth or anything about that?

A. No, sir.

Q. Anything about the computation of time so as to include travel time discussed or mentioned?

A. No, sir.

Q. What agreement did you reach after those negotiations?

Mr. Harris:

He said they signed an agreement, and if they signed an agreement—

Mr. All:

That is all right. This is it. I just wanted to show—

Mr. Harris:
May I see it.

Mr. All:
That expresses the agreement.

The Court:
That is signed by representatives of the company?

Mr. All:
Yes, sir, and the union.

Mr. Harris:
No, sir; it is signed by representatives of the company, but not by the union, by representatives—

Mr. All:
They call it that, but I am still contending probably they had something to do with the union.

The Court:
All right; let's proceed.

Q. Is this the agreement as arrived at?
A. Yes, sir.
Q. Is that the original instrument?
A. Yes, sir.

Mr. All:
I want to read this to Your Honor, read this into the record.

"Continuation of Sloss Red Ore Mine Working Agreement.

"Confirming understanding reached at conference between representatives of employees of our Sloss Red Ore

Mine and the management with reference to Working Agreement dated September 13, 1937, and which expires September 13, 1938, it is hereby agreed to extend this agreement for twelve months and expiration date is hereby changed to September 13, 1939."

And it is signed by Sloss-Sheffield Steel & Iron Company by Ben Davis, and Employees Committee by John Hill, Jesse Gaines,—I can't read the rest of them.

A. J. W. Gilbert and W. A. O'Neal.

Q. J. W. Gilbert and W. A. O'Neal; dated the 3rd of September, 1938.

That is Sloss Exhibit Number 13.

The Clerk:

Number 13.

(Thereupon the said document just described and read into the record was marked Sloss Exhibit No. 13.)

Mr. Harris:

The reason I didn't object to this, Judge, was on account of the date. That is dated September 3rd or 13th, 1938. That is the reason I didn't get up and interpose a special objection.

Mr. All:

I want to substitute this copy for the original.

The Court:

Are you through?

Mr. All:

No, sir. I have another year or two here.

Mr. Harris:

May we see it?

Mr. All:
I will hand it to you in just a minute.

Q. Mr. Costner, I want to hand you that and ask you if you know what that is.
A. That is a proposal—

Mr. Harris:
No, no, we object. He asked you if you knew what that is. He didn't ask you—

Q. Did that come into your possession?

The Court:
Do you know what it is?

Q. Do you know what that is?
A. Yes, sir.
Q. Did that come into your possession?
A. It did.
Q. When did it come into your possession?
A. In August, I believe, of 1939.
Q. August of 1939?
A. I am sure it was that time.
Q. Who delivered it to you?

The Court:
Who gave it to you?

The Witness:
The local committee at the Sloss Red Ore Mine.

The Court:
Committee of whom?

Q. Consisting of whom?

A. A committee of employee representatives, Mr. Hill, Mr. O'Neal, Jesse Gaines and probably one or two others.

Q. Do you know what connection they had with the International Union of Mine, Mill & Smelter Workers or any local of that organization?

A. They were the local officials of the union, Local Number 109. Designated as the Sloss Red Ore Local, International Union of Mine, Mill & Smelter Workers.

The Court:

What is the date of that?

Mr. Bronaugh:

This is undated, this thing here is. I don't know what date he got it.

Q. Mr. Costner, you stated you got this about when?

A. I think in August of 1939.

Q. August of 1939? You mean by you think—you mean that is your best recollection?

A. Yes, sir.

Mr. All:

All right, sir.

If the Court please, I want to call attention to the fact and read this into the record just to—with respect to its bearing on this proposal; that this proposal—

Mr. Harris:

Just a minute. If I may object before you read anything into evidence—

The Court:

Have you introduced that in evidence?

Mr. All:
I thought I had.

Mr. Harris:
No, he hasn't. I had been waiting to object.

Mr. All:
Identify this.

The Clerk:
Exhibit 14.

The Court:
I will hear your objection.

Mr. Harris:
The gentleman on the stand says that was handed to him in 1939, so our agreement with which we began the case to save time, my regular objection started in October 24, 1938, as your Honor will recall, and therefore, I have to object to this to preserve my theory of the case.

I object to the introduction of that paper for the reason that no private agreement, no effort to negotiate, no employee representative, whether he represents the union with his authority, or whether he represents a union that was recognized or not recognized, that individual cannot by private agreement nullify a solemn act of Congress, and it is wholly irrelevant and immaterial and has no bearing in this case, and it is immaterial what documents we passed back and forth to each other either before October 24, 1938, or after October 24, 1938; that the Act of Congress governs; that the question in the case is a question of fact and that question of fact is for this Court to determine when did men working in underground ore mines actually start work, and it doesn't

matter what that document says or anybody else on earth says. It is a question of fact for the Court to determine. Once that question of fact is determined, the Act of Congress controls, so we submit that is not admissible.

The Court:

I am going to overrule your motion,—I mean your objection.

Mr. Harris:

We except.

The Court:

It is true the sole question for me to determine, for the Court to determine in this case is what constitutes a workday or a work week, but I must admit there have been a lot of things that have come into this case from both sides I didn't see in the beginning where they had any relevancy in this case.

Mr. Harris:

I think it has spread out a lot, Judge.

The Court:

You take the investigation of the mines, the dust count and those kind of things,—it has gone into a sociological proposition. There were many things that have come into this case that were not apparent to me before the case started, and I am not prepared to say what bearing they will have in the case before it is over.

Mr. Burr:

Will Your Honor permit me to state our ideas of that kind of evidence?

The Court:
I think it has some bearing.

Mr. Burr:
We think if there is any ambiguity in the Act, one thing, in passing on hor to construe the act is how the parties themselves construed it.

The Court:
That is my idea on the evidence.

Mr. All:
I want to call the Court's attention to the fact this contract hasn't in it the same definition of the workday.

The Court:
What paragraph are you going to refer to? Let's get to that.

Mr. All:
Section 22 (a).

The Court:
Is it section or paragraph?

Mr. All:
Well, it is designated section.

The Court:
Section 22 (a)?

Mr. Quinn:
Of the contract?

Mr. All:
This proposal.

The Court:
Sloss Exhibit 14.

Mr. All:
"The day shift shall begin hoisting ore at 7 A. M. and quit at 3:15 P. M., and the night shift shall begin hoisting ore at 6 P. M., and quit at 2:15 A. M."

Now, that is the proposal.
I want to substitute a copy.

Mr. Harris:
Have you marked it as an exhibit?

The Clerk:
I have marked it, yes, sir.

The Court:
That is Exhibit 14.

(Thereupon a document entitled "Agreement" and consisting of 28 numbered sections, and not executed, was marked Sloss Exhibit No. 14.)

Q. Now, Mr. Costner, did you have any negotiations or discussions with the committee of the union or the committee of the employees after that proposal was submitted to you?

Mr. Harris:
Now, in order that I don't have to repeat, may I have that objection that I stated to Your Honor on all these questions after October, 1938?

Mr. All:
That is perfectly satisfactory.

The Court:
All right.

A. Yes, we had several meetings.
Q. And was the question of the portal to portal policy or the face to face policy discussed?
A. It was never mentioned.
Q. Never mentioned. The question of when work time commenced was not mentioned, you say?.
A. No.
Q. Then later did you reach an agreement?
A. We did.
Q. Was that evidenced by writing or was it an oral agreement?
A. By writing.

Mr. All:
Here you are, Mr. Harris.

(Mr. All hands paper to Mr. Harris.)

Q. Did you negotiate the agreement, Mr. Costner?
A. I did.

Mr. Harris:
Well, haven't you—You had one on September, 1939, just a minute ago. Wasn't that the last one we were talking about?

Mr. All:
It is to expire September 13, 1939. The other one was 1938 to 1939, and this one is '39 to '40.

Mr. Harris:
Well, the same objection as to the other one.

The Court:
Same ruling.

Mr. All:
There is no use to have him identify that. I introduce this in evidence as Sloss Exhibit—

The Clerk:
Sloss Exhibit 15.

Mr. All:
Sloss Exhibit 15, and I will substitute a copy.

The Clerk:
Yes, sir.

(Thereupon a document entitled "Agreement" dated September 9, 1939, and signed Sloss-Sheffield Steel & Iron Company, by Ben Davis; Sloss Red Ore Local No. 109, I. U. of M. M. & S. W., by John Hill, President, Jesse Gaines, Vice President, W. H. Gunter, Chairman Executive Board, and Van D. Jones, Board Member District Number 5, I. U. of M. M. & S. W., attached to which was one sheet entitled "Outside Rates", a second sheet entitled "Inside Rates," a third sheet entitled "Yardage Rates", and a fourth sheet entitled "Division of Tonnage Rate to Men of Crews, Hand Loaded Ore," was thereupon marked Sloss Exhibit No. 15.)

Mr. All:
I want to call the Court's attention in this connection 5 (a) of this contract contains this provision:

"Eight hours work per day shall constitute a day's work, and forty hours shall constitute a week's work. The eight hours per day means eight hours of work at the usual working place, exclusive of the lunch period."

The Court:
That was the agreement as reached?

Mr. All:
That was the agreement as reached and signed.

Mr. Burr:
What is the date of that?

Mr. Bronaugh:
September 9, 1939, and runs to 1940.

Mr. All:
Yes, sir.

Mr. Burr:
It has a special clause for termination?

Mr. All:
It has a special clause for termination, yes, sir.

Q. Mr. Costner, I hand you this paper which—I believe I will present it—

The Clerk:
Sloss Exhibit 16.

Mr. All:
As Sloss Exhibit Number 16.

(Thereupon a document entitled "Agreement", and consisting of 23 numbered sections, and unexecuted, was marked Sloss Exhibit No. 16.)

Q. I will ask you if that was presented to the company through you or if you are familiar with that?
A. It was presented to me by the—

Q. By whom?

A. By the Committee at Sloss Ore Mines representing the International Union of Mine, Mill & Smelter Workers.

Q. Do you remember who composed that committee at that time?

A. The same men that had been on the Committee for several years, Mr. Hill, Mr. O'Neal and Jesse Gaines.

Q. Do you know whether all of them were the same, or whether there were any changes at all or not?

A. Those three are the same. There may be some others in addition to those that might have been present.

Q. When was that presented to you?

A. August 30, 1940.

Mr. All:

I offer in evidence this instrument as evidencing the Union's proposal presented on August 30, 1940.

Q. Did you discuss the matter of a contract with the Committee?

A. I did.

Mr. All:

I want to call attention to this, if Your Honor please. It is Section 5,—the latter part of Section 5, after treating the eight hour day and the forty hour week, it has got this provision:

"Provided further, a day's work shall mean eight hours including the time entering and leaving the mines and exclusive of lunch period."

Q. In negotiating following that proposal, was that matter of work time discussed?

A. It was.

Q. Will you tell the Court what was said about it and to what effect it was discussed and with what results?

A. This request, with two other requests, were the major items that the union was insisting on being incorporated in the 1940 agreement.

Mr. Ratliff and I handled the matter for the company, and after several meetings we agreed upon all the major issues except this so-called collar to collar provision, and the company refused to accept the Union's proposal on collar to collar, and after the other items that they were insisting upon had been mutually agreed upon, they went back to their local and took some action there as to whether or not they would accept the proposal as submitted by the company.

In the meantime, we had submitted a counter proposal to theirs and—

Mr. All:

I want—I don't think I have offered in evidence this exhibit 16. I want to introduce this in evidence and substitute a copy. You have it marked?

The Clerk:

Yes, sir, I marked it all right. I understood you had introduced it.

The Court:

All right, where are we?

Mr. All:

I have shown them—There was a counter proposal, Judge, made by the company, and I am letting them read it.

Mr. Harris:
I don't understand exactly what this is. You will identify it?

Mr. All:
A sort of proposed contract.

Mr. Harris:
From whom to whom?

Mr. All:
Back to them from the Sloss Company.

The Court:
Let's get along, Mr. All.

Q. I will ask you—to save time, Crampton, at the expense of leading him,—if that is the company's proposal?
A. Yes, sir.

Mr. All:
I want to read—

The Court:
Is that exhibit 17?

Mr. All:
Sloss Exhibit 17.

The Clerk:
I haven't marked it yet.

Mr. All:
I will give it to you in a minute. I want to call your attention to Section 5 (a):

"Eight hours work per day shall constitute a day's work, and forty hours shall constitute a week's work. The eight hours per day means eight hours of work at the usual working place, exclusive of the lunch period."

Mr. All:

That is the counter proposal.

Mark that—is it 17 or 18?

The Clerk:

17.

The Court:

That is the counter proposal referred to by the witness a few minutes ago?

Mr. All:

Yes, sir.

(Thereupon a document, the front page of which read as follows: "This agreement originally given to committee as a proposal from the company for the 1940-1941 agreement. It was taken up on 9 11 40, when a substitute contract was proposed and accepted. T. E. C.," and the second sheet of which was headed 1939-40 contract, which form of contract was unexecuted, and to which was attached one sheet entitled, "Outside Rates", a second sheet entitled, "Inside Rates", a third sheet entitled, "Hand Loaded Ore, places 18 feet or less in width, basic tonnage—35 tons per shift," a fourth sheet entitled, "Hand Loaded Ore, places over 18 feet in width, basic tonnage—43 tons per shift," a fifth sheet entitled, "Drag Loaded Ore, basic tonnage—100 tons per shift, 15-man crew," a sixth sheet entitled, "Drag Loaded Ore, headings only, basic tonnage—75 tons per shift, 7-man crew," and a seventh sheet entitled, "Sloss Red Ore Mine—Yardage Rates," was marked Sloss Exhibit No. 17.)

Q. Now, was there an agreement between—arrived at between you gentlemen representing the company and these men representing the employees?

A. There was.

Q. And I will ask you if this is the agreement as finally arrived at?

A. It is.

Mr. All:
All right, sir. I offer this agreement—

The Court:
Dated—

Mr. All:
—dated September 11, 1940, and signed by the—

The Court:
Well, that is Exhibit 18.

Mr. All:
Yes, sir. It doesn't make any difference—

The Clerk:
That is Exhibit 18.

(Thereupon a document entitled "Agreement", dated September 11, 1940, and signed by Sloss-Sheffield Steel & Iron Company, By Roy Ratliff, General Manager, and Sloss Red Ore Local Number 109, I. U. of M. M. & S. W., By John Hill, President, Jesse Gaines, Vice President, W. A. O'Neal, Chairman of the Executive Board, and Van D. Jones, Board Member, District Number 5, I. U. of M. M. & S. W., attached to which were sheets entitled, "Outside Rates", "Inside Rates," "Hand Loaded Ore, Places 18 Feet of Less in Width, Basic Tonnage 35 Tons per Shift, 5-man Crew," "Hand Loaded Ore, Places Over 18

Feet in Width, Basic Tonnage 43 Tons per Shift, 5-Man Crew," "Drag Loaded Ore," Basic Tonnage 100 Tons per Shift, 15-man Crew, 8 Men one Shift, 7 Men Opposite Shift," "Drag Loaded Ore, Headings Only, Basic Tonnage 75 Tons Per Shift, 8-Man Crew," and "Yardage Rates," was thereupon marked Sloss Exhibit No. 18.)

Mr. All:

And I want to call the Court's attention to the fact in that contract as finally signed there is this provision:

"Eight hours of work per day—" found on page 2, paragraph (a) under Section 4, reading, "Hours of Work:"

"Eight Hours of work per day shall constitute a day's work, and forty hours shall constitute a week's work. The eight hours per day means eight hours of work at the usual working place, exclusive of the lunch period."

Now, I want to mark this as an exhibit.

The Clerk:

It will be Number 19.

(Thereupon a document dated Bessemer, Alabama, October 12, 1940, and entitled, "In Re: Sloss Red Ore Local No. 109, of International Union of Mine; Mill & Smelter Workers, District No. 5, and Affiliate of the Bessemer Smelters Council," being a resolution of said Local No. 109, with reference to the workday controversy, was thereupon marked Sloss Exhibit No. 19.)

Q. Mr. Costner, I hand you a paper here consisting of two pages that is marked Sloss Exhibit Number 19, and ask you if that came into your possession?

A. It did. This came through the mail to the company.

Q. It came through the mails?
A. Yes, sir.
Q. Did you get it?
A. Yes, sir.
Q. Do you remember about when you received it?
A. October 21, 1940.

Mr. All:
Now, Your Honor, would you like for me to read this? It is the resolution—

Mr. Harris:
Isn't that the resolution attached to the original bill of complaint?

Mr. All:
It is the same thing as attached as an exhibit to the original bill of complaint.

The Court:
Just introduce it.

Mr. All:
I want to offer this in evidence as Exhibit 19.

The Court:
Is that a resolution in printed matter?

Mr. All:
No, this is a union resolution demanding this back time.

Mr. Harris:
But that was attached to the original bill of complaint.

Mr. All:
Yes, sir; we set it up as an exhibit.

The Court:
That is described in the bill of complaint?

Mr. Burr:
Bill of complaint, yes, sir, as an exhibit.

Mr. All:
Have you got the substitute for that?

The Clerk:
Yes, sir.

The Court:
Is that all?

Mr. All:
Just two more exhibits Judge, and I am through.

The Court:
Hand over your next to these gentlemen and let some of them be looking them over. It is taking too much time.

Mr. All:
I want to offer this, Judge. I don't see it is necessary to identify it:

Q. Have you seen that, Sloss Exhibit 20?

The Clerk:
Sloss Exhibit 20.

Q. Being a letter from Mr. Van D. Jones, International Board member to Mr. Davis dated September 12, 1940.

A. Yes, sir, I received it.

Mr. All:
I want to offer this in evidence.

(Thereupon a letter dated Bessemer, Alabama, September 12, 1940, addressed to Mr. Ben Davis, General Manager, Sloss-Sheffield Steel & Iron Company, 3131 First Avenue North, Birmingham, Alabama, and signed Van D. Jones, International Board Member, was marked Sloss Exhibit No. 20.)

Mr. All:
Judge, do you want me to tell you what this is?

The Court:
No, sir. You can tell me the substance of it.

Mr. All:
That is what I mean. It is a letter stating by signing the contract they could not be precluded from claiming a collar to collar basis.

Here is Exhibit 21 which we want to introduce, which is Mr. Davis' reply to it.

The Clerk:
Sloss Exhibit No. 21.

(Thereupon a document dated September 14, 1940, addressed to Mr. Van D. Jones, International Board Member, I. U. M. M. & S. W., Bessemer, Alabama, and signed Ben Davis, Vice President, was marked Sloss Exhibit No. 21.)

The Court:
Mr. Ben Davis represents the company?

Mr. All:
He is the vice president of the company.

Judge, in replying to that proposition—I think I can read it quicker than I can tell you what it is.

Acknowledging receipt of it, he says; "As you, of course, realize, the agreement was arrived at through the process of collective bargaining, and was signed by both parties in good faith after fully threshing out the matter you now refer to.

"The company expects to carry out the agreement and believes that the union will carry it out as made."

That is Mr. Davis' letter. I want to introduce that in evidence.

The Court:

Read that exhibit 20 while we are on it.

Mr. All:

"Dear Mr. Davis:

"This is to advise, that although the working agreement, or contract by and between the Sloss-Sheffield, Steel & Iron Company and the Sloss Red Ore Local Union Number 109, International Union of Mine, Mill & Smelter Workers, has been signed by the committee representing the Union, which provides among other things, 'that eight hours means eight hours work in and around the usual working places,' the signing of this agreement does not preclude the right of the organization to continue in its request for pay for travel time spent by the employees in going to and from their working places, nor does it in any way waive the contentions of the Local Union that said travel time should be treated as hours worked.

"As you know, this matter of travel time is now before the Wage and Hour Division of the U. S. Department of Labor and a decision is still pending.

"Very truly yours, Van D. Jones, International Board Member."

The Court:

Yes, sir.

Mr. All:
I want to introduce this letter. Is that 21?

The Clerk:
Yes, sir.

Mr. All:
I offer that in evidence.

Mr. Harris:
On 21, I waived the laying of a predicate, but did not waive any objections, so you would not have to lay a predicate.

Mr. All:
That is the copy of the letter. You have the original, I presume.

Mr. Harris:
That is right.

Mr. All:
I believe that is all.

Mr. Harris:
Judge, do you want me to start a cross examination?

The Court:
I would like for you to finish this afternoon.

Mr. Harris:
Finish this afternoon?

The Court:
Yes, sir.

Mr. Harris:

For that reason, if you will let me think just a moment, I will see if I can't shorten it very much very quickly then.

Cross Examination.

(By Mr. Harris):

Q. Mr. Costner, the service men as well as what you call the production men in the Red Ore Mines use carbide lights, don't they?

A. They do in Sloss Mine, but not in Ruffner Mine.

Q. Well, I thought you called the Sloss Mine the Red Ore Mine, and called the other Ruffner.

Now, then, at Ruffner, the service men as well as what you call the production men use the electric battery with the light like an automobile headlight attached to a cord about 30 inches long?

A. Yes.

Q. And all the time that you have been working out there with them this carbide light was used by both service men and production men?

A. At Bessemer?

Q. Yes, at Bessemer.

A. Yes.

Q. And that light is absolutely indispensable to their work in the mine, isn't it?

A. Either that light or a substitute light one.

Q. That is right, and all the time that light was the light you relied on, that the men used?

A. Right.

Q. Now, then, these cars the men went down on at the Number 2 Mine up until May 1st, those cars just carried six men, didn't they?

A. No, sir.

Q. Well, there were just six cars, weren't there?

A. Right.

Q. And then immediately on May 1st when you went on a portal to portal basis you speeded up by hauling eight cars down instead of six, didn't you?

A. Approximately May 1st. I don't know the exact date.

Q. Yes. Now, in this mine where you say you started hauling the men—you had had a map skip that went down to one place, and then you extended it and put in another haulage,—that was at the instance and request of the men, wasn't it?

A. Yes, sir.

Q. They kept insisting on that?

A. Yes, sir.

Q. Now, at this mine out here—I am now talking about the Ruffner Mine,—what is this thing up here?

The Court:

The question you asked just now is the Ruffner Mine?

Mr. Harris:

The question I asked just now was with reference to Sloss.

The Court:

Red Ore?

Mr. Harris:

Yes, sir.

Q. That is the way you understood it, wasn't it?

A. Yes, sir.

Q. You say this mine just started a year ago?

A. Yes, sir.

The Court:

Yes, but they haul further down now than they did before?

Mr. Harris:

I will ask about that.

Q. What is this red stuff up here in the right hand corner of this Ruffner map the way you have it arranged?

A. These are workings in what is known as the Roebuck opening.

Q. Then almost directly under that you find other red marks. Don't the men come down this slope right along here and walk down to these places?

A. There is no slope there. This is a projection laid out along the lines on which a slope will be driven. No workings extend beyond the part marked in red.

Q. How would the men walk from the mouth of the mine when they don't ride on your mantrip? How do they walk to their working places out at Ruffner?

A. They all ride—in this section here they all ride to the designated unloading stations, which are 21, 37, 14. Men working in here would unload at 21 and walk across the pitch, which is practically level, over to this section here.

Q. What is the total number of your unloading stations you are now preparing or using in your Ruffner Mine?

A. Three.

Q. Three unloading stations?

A. Four. Excuse me. There are four.

Q. Four unloading stations?

A. Yes, sir.

Q. You don't drop off the cars, but the men get off the cars? Is that the way they do? As you come down do you unhook cars or do the cars go to the end?

A. The same trip of cars is used for handling all the men.

Q. You just made one trip to take them in and out at Ruffner?

A. No, we run two trips.

Q. Now, in this other map down here of Sloss Number 2, have you got any contour markings on that map to show the elevations in the mines?

A. We have no contour lines on that map. There are some points on there to show the elevation.

Q. Have you got them marked to show on that one?

A. There is one right there that shows a cover of 1340 feet, and here is another at this point.

Q. Shows the cover?

A. Yes, sir.

Q. Does it show the height of the different hills the men have to walk over and up and down, and have to walk over?

A. No, sir. This is not a profile map. It is a map of the mine workings, and the profiles are not shown on this map.

Q. Which mine was it there was an accident on a mantrip and 11 men killed and 28 injured? Was it in Ruffner or this one here?

A. The accident did not occur on a trip. The accident occurred on Number 1 slope over here, according to the records in my office, in 1923, at which time I believe eight men were killed.

Q. It happened on a man trip, didn't it?

A. Yes, sir.

Q. Hauling men in or out of the mine?

A. I think they were going in. I don't know of my own knowledge.

Q. One other question.

A. One other answer. You asked where the accident occurred.

Q. Yes.

A. My understanding the accident occurred on a trip used for hoisting ore, but at the time men were being handled on it. It was not a regular designated or set man trip.

Q. Whether it was a regular man trip or ore car, it was a trip where men were being hauled by the company? That is what I was getting at.

A. That is my understanding, yes.

Q. Now, don't those mechanical loaders use dope or grease? You don't use that oil that the men carry in on those machines, those mechanical loaders? Don't you use something like the dope you put in automobiles sometimes?

A. They used some cup grease.

Q. Where do they get that grease, and who carries it in?

A. It comes in normally on the cars the same as the other supplies.

Q. I understood you to draw a distinction between Ruffner and the other mine, that the supplies were up close to the mouth of the mine, and the men could get them there and take them in; you don't know that distance?

A. It is true at Ruffner the supply house and shops are much nearer the opening than at Sloss.

Q. You don't have a supply house at Ruffner down in the mine?

A. No, not designated as a supply house.

Q. You do have a tool house and supply house and powder magazine down under the ground at Sloss Number 2?

A. We have a powder magazine and have a place where some supplies are kept, but not a supply house in the same sense you would speak of a surface supply house.

Q. Now, is it at all unusual for one crew to break as many as three hangers in a day?

A. That would be possible. I have never heard of it occurring, however.

Q. Do they use quarry bars at both of those mines?

A. Yes, sir.

Q. Would the men carry the quarry bars down with them?

A. No, sir.

Q. You never knew that to happen?

A. No, sir.

Q. And the powder man—weren't you mistaken about the time the powder man got there? Didn't he get there a full half hour earlier than the average men in the mine?

A. No, sir. He went down with some of the other men.

Q. But he always went on the first trip, didn't he?

A. Not necessarily. He was required to be there at 7 o'clock.

Q. But it wasn't true, as testified to by Mr. Harper, that the powder man would start issuing powder sometimes at 6:45, fifteen minutes before the 7 o'clock point?

A. There might be conditions where he issued some powder a few minutes before seven. However, as a general rule, though, he would not issue powder until seven o'clock.

Q. About how often do you go down in the mine at Number 2?

A. Right now I don't get down as regularly as I have in years prior to the present year. I now go in that mine once or twice a month. Prior—

Q. Well, from October, 1938, up until the present time, has your average been about the same?

A. No. Up to about a year ago,—maybe not so long ago,—I was in the mine approximately once a week or at least three times a month.

Q. When you were in the mine did you have any certain route to travel, or any certain place to go, or did you go in one part of the mine on one trip and another part of the mine a week or two later?

A. That was the usual procedure, but if there was some condition that I felt that I should see that I had seen on my last trip, I might one place in succession.

Q. Did you go on your night shift or your day shift?

A. I was usually on the day shift. I have been in there on the night shift.

Q. Out at Ruffner you have both a night shift and a day shift out there?

A. We do not operate a night shift there.

Mr. Harris:

One other question.

Q. When you went down into the mine, did you go on the first man trip of the second man trip or did you go down at later hours?

A. I usually went down at a later hour.

Q. Later hour?

A. Yes, sir.

Mr. Harris:

That is all, Judge.

Re-Direct Examination.

(By Mr. All):

Q. Mr. Costner, I don't know whether you covered this or not, but Mr. Harris asked you if this second Sloss—if this second ride in Sloss Mine was not continually brought up by the men. I believe you stated on your direct examination—if you haven't I will ask you if they asked for pay for travel time?

Mr. Harris:

I think he has gone into that.

Mr. All:
If I haven't asked it, I want to ask it.

The Court:
What is your question?

Mr. All:
He asked him if they didn't put it in because the men wanted it, the second riding interval on their entry into the mine. I am just asking him—I think I did—

The Court:
Ask your question.

Q. I will ask you if they asked for pay for traveling time?
A. They did not.

The Court:
Is that all?

Mr. All:
That is all.

(Witness excused.)

The Court:
We will adjourn until 9:30 in the morning.

(Whereupon, at 4:30 P. M., July 15, 1941, an adjournment was had to 9:30 A. M., July 16, 1941.)

July 16, 1941, 9:20 A. M.

Court met pursuant to adjournment.

The Court:

All right, Mr. All.

Mr. Burr:

Before Mr. All starts there is one matter I would like to take up briefly with the Court.

Your Honor will recall the other day we had filed a motion to produce minutes that were in the possession of the Smelter's Union of the negotiation meetings kept with the Tennessee Company since 1933.

There has been given me—I didn't know how difficult it would be to do this until we endeavored to do it. They have given me a list of the minutes they say they have,—it is just a list of dates beginning with July, 1933, and down to July 13, 1935,—just dates.

I turned this over to Mr. Shook, took him off everything else and turned them over to him to check them.

This is the situation: There were four sets of minutes kept, and we have introduced those which we have, which we hope are all the minutes unless they have gotten misplaced in some of these hearings we have had. First, there are the general minutes that were kept of the meetings with Mr. Ball.

The Court:

Yes, sir.

Mr. Burr:

Then there were the minutes kept of the meetings with the superintendents of the different divisions, Muscoda, Wenonah and Ishkooda.

We can't tell from these dates to which of these divisions each of these minutes apply.

Mr. Harris:

I will be glad to give it to them. I thought that was sufficient.

Mr. Burr:
You can see how difficult it is.

The Court:
It will save time—

Mr. Harris:
We will be glad to do it.

Mr. Burr:
What we will have to do, we will have to go through all four sets of them to find one.

Mr. Harris:
We will try to have this ready tomorrow morning.

The Court:
Will that be agreeable, Mr. Burr?

Mr. Burr:
Yes, sir; we will do the best we can.

The Court:
All right; by tomorrow morning.

Mr. Burr:
I would like to know what meeting it was so we will be able to do our checking.

The Court:
All right. Who will you have?

Mr. All:
Mr. Russell.

1441 J. W. RUSSELL, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

The Court:
What is your name, please, sir?

The Witness:
Russell, J. W. Russell.

The Court:
J. W. Russell?

The Witness:
J. W. Russell.

(By Mr. All):
Q. Mr. Russell, how old are you, sir?
A. 41.
Q. What is your business?
A. Mine superintendent.
Q. Where?
A. Sloss Red Ore Mine, Sloss-Sheffield Steel & Iron Company.
Q. Bessemer?
A. At Bessemer.
Q. Will you tell us briefly what time you have been engaged in the mining business or been connected with the mining business?
A. Well, I have been connected with the mining business for about 19 or 20 years. Since 1926 I have been at Sloss Red Ore with the Sloss-Sheffield.
Q. Prior to that time where did you commence your mining business?
A. I commenced in the coal mines around 1921.

Q. Where?

A. I worked for a firm of engineers as a rodman, consultant, consulting engineers, that had coal mining contracts.

Q. All right.

A. In 1923 I went with a coal mine.

Q. And then where?

A. In 1926 I went with Sloss Red Ore at Bessemer.

Q. And have been with them since?

A. Yes, sir.

Q. In what capacities have you been with Sloss since 1924?

A. I started with them in 1926.

Q. Well, since 1926.

A. I started with them as rodman, and have been with them as safety man and mine foreman—

Q. Your assistant started with them when?

A. 1926.

Q. What was your capacity?

A. I was instrumentman.

Q. You had to do with the mining of red ore?

A. Yes, sir.

Q. Then when were you safety man?

A. That was in 1934.

Q. From 1926 to 1934 you were engineer?

A. Yes, sir.

Q. How much contact did you have with the ore mine during the time you were engineer from 1926 to 1934?

A. I had very close contact. I went underground two or three times a week any way.

Q. What did your work consist of?

A. My work as engineer consisted of making maps, laying out work, checking up on the work to see if it was performed in accordance with the plans laid out, general layout work of the mine, consultation.

Q. In the general layout of the workings of the mine?

A. Yes, sir.

Q. Mr. Russell, can you tell us what has been the work time through the custom and practice in the ore mine since you first became acquainted with the ore mines with respect—

Mr. Harris:
We object to that.

Q. —to when work time commenced and when it stopped?

Mr. Harris:
We object to that as calling for a conclusion.

The Court:
Sustain it as to the form of that question.

Q. What has been the custom with respect to the measurement of time in the work time in the ore mines—

Mr. Harris:
We object to that, if Your Honor please.

The Court:
I sustained that, Mr. All.

Q. With respect to the measurement of wage or computation of compensation?

Mr. Harris:
We object to that.

The Court:
Confine it to his company, Mr. All. You say what is the custom all over the country.

Mr. All:
No, sir, I have only asked him within his experience. He has had experience only here.

Q. With the company you have been connected with?

Mr. Harris:
Same objection.

The Court:
Overruled.

A. The companies I have been connected with, the time started at the working place.
Q. When did it stop?
A. At a certain specified time?
Q. Where did it stop?
A. Stopped at his working place, either eight or nine or ten hours.
Q. In other words, it began and closed at his working place?
A. Began and closed at his working place.
Q. Mr. Russell, from 1926,—in 1926 and until some time thereafter, do you recollect what the work period was, whether it was eight hours or not?

Mr. Harris:
May I have an objection to all those questions, Judge, without repeating them?

The Court:
Yes; that is all right.

A. For some time—in 1926 the men were working in the Red Ore Mine for ten hours.
Q. Ten hours?
A. Yes, sir.

Q. Was that changed?
A. Yes, sir.
Q. When?
A. About 1930.
Q. What was it changed to?
A. Nine hours.
Q. Was it changed again?
A. Yes. In 1934 it was changed, I believe, to eight hours, and has been eight hours since then.
Q. During the ten hour regime was it ten hours at the working place?
A. Yes, sir.
Q. And changed to nine hours at the working place?
A. Yes, sir.
Q. And then when it was changed to eight hours it was eight hours at the working place?
A. Yes, sir.
Q. Now, 1924 when you first went there—

Mr. Harris:
1926, Mr. All.

Q. 1926,—I beg pardon,—what bath house facilities did Sloss have at Red Ore Mine?
A. At that time they had about four different places that they bathed. They had no regular bath house.
Q. No central bath house?
A. No central bath house. There were bathing facilities under each engine room, and there were also two buildings not otherwise in use that were used as bath houses.
Q. Was there water?
A. Yes, we had hot and cold water.
Q. Were there places where their clothes were kept while they were working?
A. Yes, sir.

Q. Where their change was made?

A. Yes, sir.

Q. How was that, lockers or hangers or what?

A. They had lockers.

Q. Lockers?

A. Yes, sir.

Q. Do you recollect about how far those places were from the pit mouth?

A. One was about 250 feet in the hoist engine room—under the hoist engine room, and the others were close to Number 1 mine and varied from 1500 to 2500 feet from Number 2, but rather close to Number 1. Number 1 was working at that time.

Q. How long has Number 1 been down?

A. Number 1 has been down about eight years.

Q. I will ask you particularly with respect to Number 2. Did the men go from the bath house to the pit mouth at Number 2?

A. Yes, sir.

Q. What sort of lighting system did the underground men use?

A. Used carbide lights.

Q. Carbide lights?

A. Yes, sir.

Q. Where at that time was the carbide picked up?

A. Why, I don't know. The man was free to get carbide at any place he wanted to get it. I don't know exactly where he got it. It just all depended on his own free will.

Q. Did the company keep it?

A. The company kept carbide at the commissary.

Q. And you mean the men could buy carbide anywhere they wished to buy it?

A. Anywhere they pleased.

Q. Did they bring their carbide with them?

A. Yes, sir.

Q. How did the men go down in the mine in 1924 and for some time thereafter?

A. They went down on man cars.

Mr. All:

May I have the Sloss Number 2 map?

Mr. Harris:

You keep saying 1924. When you say '24, you mean '26, I guess.

Mr. All:

Yes.

(Thereupon Sloss Exhibit Number 10, being a map of Sloss Mine Number 2, was placed on the blackboard.)

Mr. All:

This map is put on the board just like it was yesterday.

The Clerk:

No, sir; it is opposite to what it was yesterday.

Mr. All:

All right.

Q. Now, this map, Sloss Exhibit Number 10, a map of the Sloss workings, Mr. Russell, as you see it on the board, how many openings does that map show?

A. Shows two slopes.

Q. And the workings from those two slopes?

A. Yes, sir.

Q. Are you familiar with that?

A. Yes, sir.

Q. From your experience as Engineer

A. Yes, sir.

Q. In connection with those mines?

A. Yes, sir.

Q. Will you point out there the mouth,—the slope mouth or pit mouth of Number 2?

A. It is right there (indicating on Sloss Exhibit Number 10).

Q. It is rather at the bottom of the map?

A. At the bottom of the map.

Q. Sort of to the left?

A. Yes, sir.

Q. And then that slope is driven in this direction?

A. Yes, sir.

Q. Now, when you went there in 1926, how far down had that Number 2 slope been driven?

A. The number 2 slope, when I first went down, was at 64—approximately right there (indicating).

Q. Right there?

A. Yes, sir.

Q. Now, you have referred to the man trip. How far did the man trip go at that time?

A. The man trip went to 48 yard, or 48 right heading.

Q. That was somewhat shorter than the mine?

A. Shorter than the mine.

Mr. Harris:

Would you all mind talking a little louder?

Q. At that time how far had those headings been driven, at the time you went there in 1926?

A. The headings at this point had been practically worked out. There was no work down here.

Q. That was what point?

A. About 38.

Q. The headings had been practically worked out to that point?

A. Yes, sir.

Q. When the men reached the pit mouth they went down in the man trip; did they?

A. Yes, sir.

Q. Besides the carbide did they pick up anything to take down with them at the pit mouth?

A. No.

Q. And they went to the point where they got off the man trip?

A. Yes, sir.

Q. From that point how did they get to their several working places, the production men?

A. Walked.

Q. Could you give us some idea about the furtherest—How far was it from the pit mouth to where the cars discharged the men?

A. From the pit mouth to 48 is about 4,000 feet.

Q. 4,000 feet?

A. Yes, sir.

Q. Can you give us some idea as to about how far the men had to walk to their furtherest working places, the furtherest man, after they were discharged?

A. At what time?

Q. At the time you went there.

A. When I first went there the furtherest working place was about 1200 feet.

Q. From what point?

A. From 48.

Q. From 48?

A. Yes, sir.

Q. What else did the men pick up, if anything, before reaching their working places at the face? I am speaking of the production men.

A. Before—after they went down they would pick up oil and that is probably all they picked up.

Q. Where did they pick up oil?

A. At the bottom of the slope, 48 yard.

Q. At the bottom of the slope, 48 yard?

A. Yes, sir.

Q. Where and how was that oil kept?

A. That oil was kept in a tank right close to the landing place, within 100 feet of it, and the man would bring his can out and gob it or hide it and get it the next morning and take oil into his working place.

Q. Mr. Russell, talk a little louder, please, sir.

A. Yes, sir.

Q. How many men in the production crew had to do with taking oil in?

A. One.

Q. One?

A. Yes, sir.

Q. What particular man was that?

A. Usually a drill man.

Q. Usually a drill man?

A. Yes, sir.

Q. Then he took it from that point to the working place?

A. Yes, sir.

Q. How much oil was generally taken?

A. A gallon.

Q. A gallon?

A. Usually a gallon.

Q. In what sort of vessel?

A. Why, he carried it in an oil can, a regular can for carrying oil.

Q. Have a handle on it?

A. Yes, sir.

Q. At that time where was the powder?

A. In 1926 the—I don't quite recollect where the powder magazine was at that time.

Q. Do you recollect whether it was on top or underground?

A. No, it was underground.

Q. It was underground; you mean you don't remember the point?

A. I don't remember the exact point.

Q. What did that powder consist of?

A. The powder is commonly called dynamite, and it comes in 50-pound cases.

Q. But they had a powder magazine underground?

A. Yes, sir, they had a powder magazine underground, the best of my knowledge.

Q. How was that powder gotten to the working place?

A. The drill helper usually secured the powder in the morning or afternoon, as the case might be, and carried it to his working place.

Q. Do you know when he secured that with respect to his work time?

A. No, sir, I do not in 1926.

Q. You don't remember in 1926?

A. No, sir.

Q. Did you use over there detachable bits?

A. No, sir.

Q. You didn't use detachable bits?

A. No, sir, we have never used the detachable bits regularly. We have just experimented with them.

The Court:

I can't hear you.

The Witness:

I say we have never used the detachable bits regularly. We have just experimented with them.

The Court:

Talk louder.

Q. Do you—was there anything else the men took to their working places besides the powder and oil,—I mean the carbide and the oil?

A. No, sir.

Q. Now, did the company have a supply house over there?

A. There is a plant supply house on the surface.

Q. That is what I mean.

A. And at that time there was a rock house at 48, and a good many supplies, such as pipe fittings and things like that, were kept in that supply house underground,—the rock house, they called it.

Q. What supplies were kept at each place?

A. The supply house on the surface, all supplies required for the plant were kept there.

Q. All right; at the place you spoke of as 48?

A. The place at 48, they kept small supplies, such as pipe fittings, such as that, valves, many small things.

Q. How were those supplies, the needed supplies for the workmen in the production crews taken to the working places?

A. Do you mean in 1926?

Q. In 1924 and trace it—

A. In 1926 it has been—

Q. 1926, I mean.

A. In 1926—it has always been customary for the foreman to order his supplies in the morning and they are carried to the pit mouth by a truck,—in 1926 by a wagon.

Q. Is that an outside crew?

A. An outside crew, and those supplies were sent down and distributed during the day.

Q. To what point were those supplies sent out?

A. They were sent out from the supply house to the pit mouth and then taken down to the 48 yard and distributed from there.

Q. Who took them from the pit mouth to the 48 yard or supply house?

A. They were not taken by any one man. They were taken to the pit mouth and lowered underground.

Q. Who put them on the cars to lower them underground?

A. The tipple crew.

Q. Who took them off?

A. The chainer at the bottom.

Q. To what crews did the chainers belong?

A. They belonged to the haulage crew.

Q. Service crews?

A. Yes, sir.

Q. They did not belong to the production crews?

A. No, sir.

Q. From that point at 48, how were they gotten to the working places of the production crews?

A. In 1926 the working places were pretty close to 48 there, in just a few minutes, and a man could come in there and get anything he wanted, but they were also sent out by the service crews.

Q. You mean to crews working some distance away from there?

A. Yes, sir.

Q. Do you recollect about how many trips were run about that time, and how many trips—man trips have been run since that time up until 1938, we will say?

A. Three or four; they varied as to the number of working places.

Q. Do you remember about what time those trips began?

A. They started in about six o'clock in 1926.

Q. That was during the 10-hour regime?

A. During the 10-hour regime.

Q. Do you know what time they were run during the 8-hour period?

A. During the 8-hour period they started down at 7:15.

Q. 7:15?

A. 6:15.

Q. 6:15?

A. Yes, sir.

Q. What time were the men required to be at their working places under the 8-hour regime?

A. Under the 8-hour regime they were required to be at their working places at seven o'clock.

Q. Do you know how often the trips were run?

A. No, I do not.

Q. Do you know what determined it?

A. The trip started at about 6:15, and they would go down and come back as fast as possible.

Q. Where were the working places of the production crews they had to report to at seven?

A. Their working place is inside the stope where the ore is removed,—being removed.

Q. Where the ore is being shot?

A. Yes, sir.

Q. Where is the working place of the underground service crews?

A. The underground service crews began work at any designated place. It is not a fixed place. It is where they are needed. If they are working on a job one day and do not finish, they report back there the next morning. They may be there three or four days.

Q. Suppose they finish a job one day. Where is their working place,—where is their working place or where does their time start the next morning?

A. Wherever they are ordered to by the foreman.

Q. Was that true during the year 1938?

A. Yes, sir.

Q. Prior to October and after October?

A. Yes, sir.

Q. Was that true from that time on up until May 1, 1941?

A. Yes, sir.

Q. Now, after October, 1936, and for some time prior to that time and since that time, how have these sup-

plies that the production men used at their working places been gotten to them?

A. Well, as I said before, the mine foreman at the beginning of the shift in the morning will make an order to the supply house, and the supply men will get up the supplies and deliver them to the pit mouth in the truck, and at that point they are loaded on the trip and are sent down to 48, and are distributed out from that point.

Q. Distributed to the working place?

A. Yes, sir.

Q. What supplies does that include that were distributed in that way?

A. That would include everything except powder and drill oil.

Q. Powder and drill oil?

A. Yes, sir.

Q. And the carbide?

A. Yes, sir, the carbide. Of course, I wouldn't consider that supplies. That is purchased by the men.

Q. Now, from October, 1938, and prior to that time and through the period to May 1, 1941, where was the powder house?

A. The powder house is now at 67 right heading. Prior to that time it was at 62 left.

Q. How long has the powder house been at 67 right heading?

A. Several years.

Q. Prior to that time how long had it been at 62 heading?

A. For several years; I don't know just how long.

Q. The powder during that time was distributed from those powder houses?

A. Yes, sir.

Q. What time was the powder distributed usually to the day shift?

A. The powder to the day shift was distributed at the beginning of the shift.

Q. At what time?

A. Seven o'clock.

Q. Seven o'clock?

A. Yes, sir.

Q. Did you have a powder man there to issue powder?

A. We had a magazine attendant. He would open the powder house at seven o'clock and start issuing powder.

Q. Mr. Russell, at October, 1938, and sometime prior to that time and through 1938 and up to May 1, 1941, you say the powder was issued?

A. Yes, sir.

Q. And I believe you stated that the work started at 7 o'clock?

A. Yes, sir.

Q. Now, as applied to that period, can you tell us about the number of drag crews there were among the production men, and how many hand loading crews?

A. At what time?

Q. October, 1938,—October, 1938, and prior to that time, and up to May 1, 1941.

A. In October, 1938, there were eight drag crews, and the hand crews varied from 18 to 25 as the case might be.

Q. All right. How long back of October, 1938, had that existed?

A. There had been eight drag crews for approximately eight years.

Q. And the rest of them were hand crews?

A. The rest of them were hand crews.

Q. Now, about how many men were there in the drag crews?

A. There are 15 men in a drag crew, double shift.

Q. I am talking about one shift.

A. One shift would be eight or seven.

Q. How about the hand crews?

A. Hand crews, there were five men.

Q. How are the men in the drag crews divided as to their working assignments?

A. A drag crew consists of two drill men, one drill helper, one drag runner and a tram engineer. That does not include the head miner who works on one shift. There are no head miners on the opposite shift. The head miner works on one shift only.

Q. How about the hand loading crews?

A. The hand loading crews consist of a drill man, drill helper and three muckers.

Q. Now, all of the underground men, of course, use the carbide?

A. Yes, sir.

Q. Was there anything that the service crews got before reaching their working places except the carbide?

A. No.

Q. Was there anything that the service crews needed to get—

A. No.

Q. —except the carbide before reaching their working places?

A. No, sir.

Q. Now, you stated that when you went there in 1926 that the man trip stopped at 48?

A. Yes, sir.

Q. About 48?

A. Yes, sir.

Q. Has there been—has there been any additional travel interval for men since that time? Have you added any riding interval in there?

A. Yes, we—

Q. Where is that?

A. In 1940 we added the travel from 55 left to 74.

Q. Do you remember when that was?

A. That was in October of 1940.

Q. In October of 1940?

A. Yes, sir.

Q. In 1938 where had the slope reached?

A. In 1938 the slope had reached approximately this point right here, at 85 right.

Q. At 85 right?

A. Yes, sir.

Q. Now, at that point, could you point out where, at that time, the furtherest working places were on that map from the slope?

A. At that time the bottom of the slope was about the furthereest working place.

Q. The bottom of the slope?

A. Yes, sir, furtherest place.

Q. At that time how far was the bottom of the slope from where the man trip ran in 1928?

A. It was around 4800 or 5000 feet.

Q. Where were the more remote and deeper headings that were still being worked in 1938?

A. These headings here were being worked.

Q. That is on the right side of the map?

A. Yes, sir, the right side, and on the left side these headings were being worked but had not been driven to the present slope.

Q. That is on the left of the map?

A. That is on the left of the map.

Q. Do those points shown in red on this map indicate working places?

A. Yes, sir.

Q. As of what time?

A. I should say as of the last year or two.

Q. As of the last year or two?

A. Yes, sir.

Q. Would that indicate—How far has that slope been driven—

Mr. Harris:

I can't hear you, Mr. All.

Q. I mean how far is the bottom of the slope from the property line?

A. The bottom of the slope at this time is approximately 200 feet from the property line.

Q. From the Sloss property line?

A. Yes, sir.

Q. Is it still being driven further?

A. No, sir; it is being mined.

Q. What do you mean by being mined?

A. There is a difference between driving a slope and mining ore. If you are mining ore you are using a drag.

Q. Are you or not driving the slope or mining the slope?

A. That is somewhat confusing. We are mining on our property line. The slope will not be driven any further.

Q. The mining you are doing will not extend the slope?

A. No, sir, it will not extend the slope.

Q. Is the mining you are doing on the side of the slope?

A. No, sir, directly in front of it.

Q. Directly in front of it?

A. Well, not exactly; we are working to the side and front.

Q. You are working around the end of the slope?

A. Yes, sir, through stopes.

Q. Are those stopes to the right or left of the slope?

A. They are to the left of the slope at the present time.

Q. Any to the right?

A. No, sir.

Q. Mr. Russell, at Sloss, how many men, employees, workmen, work underground, and how many above ground?

A. There about 375 underground and about 75 surface, something like that. That number varies from time to time.

Q. But approximately 1938, and at the present time, about how many employees of Sloss Company at Sloss Mine?

A. That varied from 425 to 500.

Q. Can you divide that, say about how many were underground and about how many above ground?

A. Well, at the present time there are about 400 underground and 100 on the surface.

Q. About 1938 how did that run?

A. 1938 there were considerably less than that. I should say there were about 75 on the surface, and about 300 underground, 350 or 75, I don't remember those figures exactly.

The Court:

Does that include both shifts?

The Witness:

Yes, sir, that includes both shifts.

Q. Mr. Russell, at May 1, 1941, was the time at the face—how did you change your time of work?

A. How was that?

Q. How did you change your time of work at May 1, 1941?

A. At May 1, 1941, we installed a clock system at the pit mouth, and each man at the pit mouth punched a clock when he went in and also punched it when he went out, and the time, being portal to portal, we paid for.

Q. In other words, you put in a portal to portal system on May 1, 1941?

A. Yes, sir.

Q. Do you know when the work time of the men started May 1, 1941?

A. Yes, sir, the time started at 6:30 and ended at three o'clock with thirty minutes lunch period.

Q. Started at 6:30?
A. That is the first shift. We have three shifts.
Q. You have some men that start at three o'clock?
A. Yes, sir.
Q. And the other men go down—
A. Somewhat later. The third trip would be the same way.
Q. You have them eight hours over all?
A. Yes, eight hours over all, yes, sir.
Q. Including travel time?
A. Including travel time.
Q. Mr. Russell, will you tell us whether or not that reduction in work time has resulted in reduction in the production of the ore?

Mr. Harris:
We object to that, if the Court pleases; calls for a conclusion.

Mr. All:
I am not asking him for figures. I am just asking if it has.

Mr. Harris:
Same objection.

Mr. Bronaugh:
It has been shown, I think, Your Honor.

The Court:
I will overrule the objection.

Mr. Harris:
We except.

A. Yes, sir, we have had a reduction.
Q. Has it shortened the work time?

Mr. Harris:

Just a minute. In reference to the Sloss Company, if the Court pleases, they amended their complaint, and my recollection is they took out by amendment all allegations there had been any decrease in production. They expressly removed that from their case, and if I am mistaken about the amendment, I would be glad to be corrected by the gentlemen on the other side, but my recollection is they completely removed any claims as to loss of production.

Mr. All:

This is a general question, and I am not going into figures just here. I am not undertaking to go into the figures, but I am just asking this question. I think the Court wants the picture. I think this is admissible in evidence regardless of any allegation.

Mr. Harris:

But he framed the issues by his complaint, and after considerable study he comes into Court and amends his complaint and strikes out all allegations about production.

Now, having taken it out of the case in that way, he comes in in an indirect way and asks a witness about it, and we think it is not in the issues in the case.

The Court:

I don't think it is proper.

Mr. All:

As I say, if the Court please, it is a part of the general picture of the case. I am not going into any figures. I am just giving the Court the general picture.

Mr. Harris:

We object.

The Court:
I sustain the objection.

Mr. All:
We except.

Now, if the Court pleases, I might say in that connection I think that has a bearing on the intent of Congress. I am talking about—it isn't always necessary to make a particular averment in, but I think this question has a bearing on the intent of Congress as to the inevitable effect of the act, and the requirement to carry that Act into effect would reduce production, and therefore, I think that would have some bearing on the question of intent. I think it is certainly a debatable question whether Congress contemplated a change which would result in a decreased production, and I think it is competent on the ground and on the general ground, and I would like for the witness to answer just the question whether it has decreased production.

The Court:
I sustain the objection.

Mr. All:
We except.

Q. Now, Mr. Russell, I show you a bunch of papers here which purport to be statements and receipts. I will ask you to state to the Court what they are.

A. They are pay receipts.

Q. State what—fully explain them.

A. They are statements of money owed in wages by the company, and they are signed by the employees and turned back into the office on payday, and he is paid on these receipts.

Q. How are those used in connection with the payment of the man for his work?

A. This statement here—these are purely a receipt to the company to show the man has been paid.

Q. Is there a statement of the work which he did and a statement of what they owe him?

Mr. Harris:

We object; the receipt would be the best evidence.

The Court:

What is the materiality?

Mr. All:

Judge, I am introducing those for the same purpose for which Mr. Burr introduced his, to show these are confirmatory of the contract. It is the same purpose for which those Tennessee Company receipts were introduced. It is not a defense to any claim on the part of any particular man, but to show the system and this is a typical receipt.

The Court:

The idea is to show they worked that length of time a day and accepted the money?

Mr. All:

Yes, sir, and understood—

The Court:

And understood it?

Mr. All:

And understood it; that is all.

Mr. Harris:

Of course, that is an argument. If he says they understood it it is an argument as to the particular man.

The Court:
The purpose is to show the man worked there eight hours or nine hours?

Mr. All:
And knew they were being paid for that amount.

Mr. Harris:
Of course, we object to each one separately and severally on all the grounds.

The Court:
I will admit it.

Mr. Harris:
We except.

The Clerk:
It will be Sloss Exhibit Number 22.

(Thereupon a number of pay statements and pay receipts of the Sloss-Sheffield Steel & Iron Company issued to and signed by John Hill were marked Sloss Exhibit No. 22.)

Q. Mr. Russell, I notice here—are these separate slips all the same?
A. No, sir.
Q. I don't mean for the same period, but are they all for the same purpose?
A. Yes, sir, all for the same purpose.
Q. I notice these long yellow—what are the long yellow slips?

Mr. Harris:
They speak for themselves, Judge, if he introduces them.

The Court:
Go ahead.

Q. What is the purpose?

A. They are all for the same purpose, but the long yellow slips were established after October, 1938.

The Court:

After what?

The Witness:

They were put in effect after October, 1938.

Q. You mean after the Wage & Hour law went into effect?

A. Yes, sir.

Q. I notice some of these are like this for a month or two and then change—

A. Yes, sir, it took some time to make a change.

Q. Who was the typical employee who we—

Mr. Harris:

I object to saying who is a typical employee.

The Court:

I sustain the objection, Mr. All.

Q. Was this man whose name appears on here, John Hill, an employee of the company?

A. Yes, sir.

Q. And those are actual papers?

A. Yes, sir.

Mr. All:

That is all.

Mr. Bronaugh:

Wait just a minute.

Q. Mr. Russell, were similar receipts taken for all employees?

A. Yes, sir.

Q. During that period?

A. Yes, sir.

Q. Had that been the practice before that period?

A. Yes, sir.

Q. And for some time prior to that time?

A. Yes, sir.

Q. A number of years?

A. Yes, sir, quite a few years.

Mr. All:

That is all.

Mr. Harris:

Mr. Russell—

Mr. Burr:

I have one or two questions I would like to ask this witness, if Your Honor please.

The Court:

Yes, sir.

(By Mr. Burr):

Q. Mr. Russell, you said you worked at Wenonah at one time?

A. Yes, sir.

Q. When was that?

A. 1923 to 1926.

Q. What position did you hold there?

A. I was an instrumentman in the engineering department.

Q. That was employment directly by the company?

A. Yes, sir.

Q. Was your work underground work?

A. Yes, sir.

Q. In the department you belonged to, did you have general charge of laying out the mine plans and extensions?

A. Yes, sir.

Q. Where the tracks should be located and things of that sort?

A. It was.

Q. It was general engineering inside you were doing?

A. Yes, sir.

Q. While you were there did you become familiar with their working practices, whether they were working eight hours or ten hours a day?

A. Yes, sir, I was familiar with the system.

Q. What hour system were they on while you were there?

A. At that time they were working ten hours.

Q. Did the computation of the pay of the men—did that include service men and production men also?

A. Yes, sir.

Q. Did that include the traveling time?

A. I couldn't say about that. I didn't have anything to do with the computation of the time.

Q. You don't know about that?

A. No, sir.

Q. One other thing or two. I believe you said over at your Sloss operations from May 1, 1941,—I believe you say you started the new plan you have described on that date?

A. Yes, sir.

Q. Have you told all the changes you made? Did you work the same crew and the same system?

A. Yes, sir, same crew and same system.

Q. The only change you made was cutting the time over all in the mine?

A. Yes, sir.

Mr. Burr:

I want to ask the same question to which you sustained objection when Mr. All asked it. I want to ask him for the Tennessee Company and Republic Company whether there has been a decrease in production as contrasted with the old—

Mr. Harris:

We object.

The Court:

I think I will admit it.

Mr. Harris:

We except.

Q. Has there been a reduction in production?

A. Yes, sir.

Q. Can you give it to us in cars?

A. No, sir, I can't give it in cars because we don't compute it that way.

Q. Could you give it in percentages?

A. It is about five percent.

Q. It is about five percent?

A. Yes, sir.

Q. Contrasted with what period?

A. Prior to May 1st.

Q. Over what length period?

A. About six months.

Q. Contrasted with the prior six months there has been a reduction in production?

A. Yes, sir.

Mr. Burr:

That is all.

Cross Examination.

(By Mr. Harris):

Q. Mr. Russell, are you superior to Mr. Costner or is he your superior?

A. Mr. Costner is my superior.

Q. Are you next in rank below him?

A. I am next in rank below him.

Q. I am not clear as to the periods, after you went with the Sloss Company, you served in different capacities. In 1926 you were a member of an engineering crew, weren't you?

A. Yes, sir.

Q. How long after you went with the Sloss Company did you continue a member of an engineering crew?

A. Until 1936.

Q. You were a member of that crew which was engaged in running surveys and drawing maps and making measurements, wasn't you?

A. Yes, sir.

Q. You had nothing to do with the employment of the men?

A. No, sir.

Q. And you had nothing to do with the discharge of the men?

A. No, sir.

Q. You didn't assign the service men to their tasks, or the production crews to their tasks for those ten years?

A. No, sir.

Q. Now, when your went with the Sloss Company, how many crews, that is, how many mining crews would you say there were in the mine?

A. I couldn't say exactly.

Q. Could you give us a rough estimate?

A. No, sir. At that time you see both slopes were running, both Number 1 and Number 2 mines were in operation.

Q. You didn't have anything to do with Number 1, did you?

A. Yes, sir.

Q. You worked in both of them?

A. Worked in both of them.

Q. And your work didn't require you to get to the mines at the time the men went down so you could go down the mantrips with them?

A. No, sir, not as a rule.

Q. And your work didn't require you to familiarize yourself with what the service crews were doing and what the production crews were doing, did it?

A. No, sir.

Q. In 1936, what did you start doing?

A. In 1936 I was safety inspector.

Q. How long did you stay safety inspector?

A. For approximately two years.

Q. And what did you do after you quit being safety inspector?

A. I became superintendent.

Q. Do you remember what month and what year?

A. Yes, sir.

Q. What month?

A. June 1, 1938.

Q. June 1st?

A. Yes, sir.

Q. Now, when you went to work out there do you know how many contractors they had working in the mines?

A. I can't tell you offhand—

Q. Can you—

A. —exactly how many at that time. I can tell you approximately how many.

Q. How many were there?

A. There were about 25 or 28.

Q. In 1936 how many contractors were working in the mine?

A. Probably the same number.

Q. And 1938 when you became superintendent of Number 2,—that is the one you are superintendent of, isn't it?

A. Yes, sir.

Q. How many contractors did you have in the mine?

A. Twenty-five.

Q. That meant there were 25 drill crews or mining crews in the mine, or did it mean there were less or more mining crews than that?

A. It meant there were more crews.

Q. What was the nature of the work that a contractor's crew did?

A. Well, in calling the men a contractor, I presume you mean a head miner.

Q. Yes.

A. Well, it depended on his duties. A drill man, of course, ran a drill. The drill helper assisted the drill man. The muckers loaded the ore.

Q. Now, the first time you recall ever putting a clock to check on the men out at Number 2 mine was around May 1, 1941, wasn't it?

A. Yes, sir.

Q. Prior to May 1, 1941, there was no clock either at the mouth of the mine or down in the mine that any man had to punch, either going in or coming out, was there?

A. No, sir.

Q. And you did not have at Number 2 mine any system whereby the man turned in a check and it was put on a rack to show when he went to work, did you?

A. No, sir.

Q. And during the period from 1936 to May 1, 1941 all the mining in the Sloss Mine by the production crews was done on a tonnage or contract basis, wasn't it?

A. Yes, sir, it was done on a tonnage basis.

Q. Done on a tonnage basis?

A. Yes, sir.

Q. And the men were paid according to the number of tons they produced?

A. Yes, sir.

Q. And you had no way of determining up until May 1, 1941, how many hours a man actually worked and how many hours he didn't work, did you?

A. The only way of determining that, we could determine how many hours the men were underground.

Q. All you knew was that he was underground, and you merely knew that because you knew your skip went down approximately for 45 minutes in the morning shift, and then you knew that on the night shift the skip went down for a period of 45 minutes, and you knew when the skips the man trips started down?

A. Yes, sir.

Q. Now, the mining crews, when they were put in a heading or a stope, the head miner, the contractor, contracts with the company and say he goes in heading 72 and he starts mining that heading and he has to mine out stopes. About how many months or weeks would that man be working in Number 2 heading—Number 72 heading in the normal course of things before he exhausted it and had to be assigned to a different heading?

A. You could hardly say an exact period of time. He would stay in there until the place was worked out.

Q. That would run anywhere from two months to six months?

A. It would run anywhere from six months to several years.

Q. Six months to several years?

A. Yes, sir.

Q. Then the service men didn't have a place they would go to for from six months to several years, did they?

A. No, sir.

Q. They were moved and shifted about the mine constantly from day to day and week to week and month to month, weren't they?

A. Yes, sir.

Q. So there was no way of fixing any particular location at any particular time on the records of the company and saying at that particular time in this particular place a service crew was working here?

A. Well, you could hardly do that.

Q. Hardly do that?

A. No, sir.

Q. Now, did you ever yourself ride one of those man trips and see how long it took to go from the mouth of the mine to the first man unloading station?

A. Yes, sir.

Q. What was the actual length of time on the man trip from the mouth to the first unloading station?

A. Six minutes.

Q. And then the total time of the ride to the second unloading station?

A. Ten minutes.

Q. And the total time of riding to the third unloading station?

A. There weren't three unloading stations.

Q. You have never had but two unloading stations out there?

A. Two, yes, sir.

Q. Have you ever, either while you were an engineer or since you became superintendent, made any check back in the stopes of the mine to see how much air was coming in any particular room or stope a minute?

A. Yes, sir.

Q. When did you make that check?

A. I didn't make any check personally, but it was made about six months ago by one of the company's safety engineers.

Q. Who was that man that made that check?

A. He was Mr. Burgess.

Q. Mr. Burgess?

A. Yes, sir.

Q. And so far as you know about six months ago,—that was the first check that was ever made?

A. No, sir; those checks are made from time to time. That was the last one.

Q. Did they make dust counts to test the purity and quality of the air?

A. I presume so. I am not certain.

Q. You don't know?

A. No, sir.

Q. As superintendent of the mine you didn't get any report from this other engineer to show the condition of your mine?

A. Yes, sir. I have the reports. I haven't them with me, however.

Q. You haven't what?

A. I haven't them with me, I say.

Q. I know, but you got reports every six months showing—

A. No, not every six months. These inspections were not made at any regular periods.

Q. Did you keep those reports?

A. Yes, sir.

Q. You say you haven't got them with you?

A. Yes, sir.

Q. And those reports show the dust count and amount of air coming in the different stopes and headings and the amount going out?

A. They would show the amount of air. I am not positive about the dust counts.

Q. This bath house you described up at Number 2 portal as being only 200 feet away from the portal, that only had accommodations or was large enough only to take care of about fifteen or twenty white men?

A. I believe so. I believe there are about 15 or 20 white men in there.

Q. As I recall, I believe you told the Judge or Mr. All a while ago there were about 500 men working there?

A. Yes, sir.

Q. So the actual bath houses where these men had to bathe, except the 15 or 20, was not there at Number 2 but was at Number 1 bath house about three-quarters of a mile away?

A. No, sir, it wasn't three-quarters of a mile away.

Q. How far away was it?

A. I would say about half a mile.

Q. About half a mile?

A. Yes, sir.

The Court:

When did the men stop working on the tonnage basis?

The Witness:

You mean when did they stop or start?

The Court:

Stop.

The Witness:

They are still working on the tonnage basis.

The Court:

I don't understand how a man works eight hours a day and then is paid on a tonnage basis. Is he paid on the tonnage basis or by the day?

The Witness:

It would be rather complicated to explain to you.

The Court:
I don't understand it.

The Witness:
He is paid on the tonnage basis and then guaranteed so much a day for eight hours.

The Court:
Can you explain it?

The Witness:
No, sir, not right off, I can't.

Mr. Harris:
Could I interrupt Your Honor and ask one question?

The Court:
Yes, sir.

Q. Even this guaranteed minimum you are talking about, that just started in the last few years, didn't it?
A. Yes, sir.
Q. When was it these men who have always been paid on a tonnage basis started getting a guarantee from the Sloss Company for a minimum wage?
A. Are you asking me?
Q. Yes. I am not asking the Judge.
A. 1940.
Q. And up until that time they didn't even have a guarantee?
A. No, sir.

The Court:
Is that called the incentive plan?

The Witness:
It is something similar to that.

Mr. Harris:

Well, I might find out—I will switch back, if Your Honor is through. I didn't mean to interrupt you.

The Court:

I am through.

Q. Now, then, when the men walk that half mile, you say, from that Number 1 mine bath house up to Number 2, is that walk on level ground or is it uphill and downhill?

A. It is partly on level ground and partly uphill and downhill. Of course, the—

Q. Any hills in between?

A. You are speaking of the present time, or—

Q. I mean—I am speaking of the people who had to do the walking. You have changed all that since May 1st?

A. We have changed that.

Q. When you mentioned to Mr. All the changes you had made, you didn't mention the bath house?

A. I didn't bring in the bath house.

Q. Well, you think it over and see if there are any other changes you made on May 1st you didn't call to Mr. All's attention?

A. I don't recall any at the present time.

Q. Now, you testified that production had fallen off?

A. Yes, sir.

Q. And you know enough about the operations of your company to know that they keep accurate records from month to month and year to year showing what their production was and is, don't you?

A. Yes, sir.

Q. And those records are available showing—here in Birmingham—showing what the production has been month by month and year by year?

A. Yes, sir.

Q. And neither you nor anybody else has to rely on just an estimated percentage? You estimated it at 5 percent, but you haven't been to those records and taken those figures and a pencil and made the mathematical calculation to determine accurately whether it was 5 percent or 4.1 percent or 3.72 percent?

A. No, sir.

Q. Now, the Sloss Company doesn't make steel. All it does is, so far as the iron ore is concerned, it mines the ore and manufactures pig iron?

A. Yes, sir.

Q. And you have records not merely of the amount of raw ore that you get out of the ground, but the amount of pig iron that is made out of that ore, don't you?

A. I wouldn't know about that. I am not connected with the furnace department. All I would know about would be the iron ore.

Q. You don't know whether they have furnace records or not?

A. I don't know; I presume they have.

Q. That is your understanding, isn't it?

A. Yes, sir, it is my understanding they do have.

Q. The same kind of weekly and monthly and yearly records I asked about about the ore?

A. Yes, sir.

Q. The Sloss Company doesn't mine iron ore and load iron ore on cars and ship those cars of ore to other states or other companies, does it?

A. I couldn't answer that question positively. It is my opinion they do not do that, but I couldn't say.

Q. In other words, the Sloss Company; according to your recollection and judgment, mines the ore in order to put that ore in the furnaces of the Sloss Company and make pig iron out of it?

A. Yes, sir.

Q. Well, now, to refresh your recollection, on May 1st another change that you made was that instead of having

six-man cars hauling the men down in the mine you increased the trips to eight-man cars, didn't you?

A. That was made somewhat prior to May 1st.

Q. Well, within a week or two?

A. I will say a month.

Q. You made that change yourself, didn't you?

A. Yes, sir.

Q. Under your supervision?

A. Yes, sir.

Q. And you started making that change at the time you got orders to get ready to go on portal to portal?

A. Yes, sir.

Q. Then you made another change, didn't you, up at the tipple along about that time?

A. I don't recall anything at the tipple.

Q. You don't recall? You don't recall putting a new helper on the hoist, or a new hoist in about May 1st?

A. No, I don't believe I do.

Q. An automatic hoist? You don't remember changing to an automatic hoist?

A. Oh, you are speaking of remodeling the tipple. That has been done this month, in July.

Q. Yes.

A. That wasn't done prior to May 1st.

Q. But it has been done since you went on the portal to portal?

A. Yes, sir, it has been done since we went on the portal to portal.

Q. And that change you have made speeds up production, doesn't it?

A. Yes, sir.

Q. And you have got a new dump—you have put in a new dump for dumping cars at the top, haven't you?

A. Yes, sir.

Q. And that has been done since May 1st?

A. Yes, sir.

Q. And that speeds up production, doesn't it?

A. Yes, sir.

Q. And before you used to have four man trips going down to the—going down the slope, and now you only have three man trips going down the slope?

A. That is right.

Q. You have cut out one entire man trip? That one thing alone has saved ten minutes time, hasn't it?

A. I couldn't say. I presume it has saved some time.

Q. That is ten minutes time each way, going down into the mine and coming out of the mine?

A. I presume there has been some time changed—time saved.

Q. Now, all this talk—this evidence you have given about the operations, going down and coming out, and the time it took, that testimony on your direct examination apparently applied primarily to the day shift, but the same thing would apply as to time elements on the night shift, wouldn't it?

A. Yes, sir.

Q. Actually the—there is no substantial difference in mining underground between a night shift and a day shift?

A. No, sir, there isn't any.

Q. There is some doubt on our part as to whether you have already testified, and you may have,—if you have, pardon me,—that is, how many times per month you go down into the mine?

A. Why, I usually average about four days a week.

Q. About how many?

A. Four days a week.

Q. Four days a week?

A. Yes, sir.

Q. Have you been doing that ever since you were superintendent?

A. Yes, sir.

Q. And then back during those ten years you were on the engineering—

A. Well, I would hardly go underground as regular as that.

Q. I imagine there were times when you didn't go underground for two or three weeks at a stretch?

A. No, sir, I wouldn't think so. I would think I would be underground once or twice a week anyway.

Q. As an engineer?

A. As an engineer.

Q. Do you have any regular time when you go underground out there?

A. Yes, sir. As a usual rule I go in the morning.

Q. What time?

A. About 7:30.

Q. What?

A. About 7:30.

Q. 7:30?

A. Yes, sir.

Q. And you have been following that practice how long?

A. Several years.

Q. Since 1938?

A. Yes, sir.

Q. Now, how do you get down underground?

A. I ride down on the ore car by myself.

Q. You ride down on an ore car and do not ride the man trips?

A. Except in exceptional cases.

Mr. Harris:

I believe that is all.

Re-Direct Examination.

(By Mr. All):

Q. Mr. Russell, Mr. Harris asked you about the matter of remodeling the tipple, which has occurred since May,

1941, and putting in a new dump and making some additions to the man trip or something of that sort, which you said, in answer to his question, would speed up production.

A. Yes, sir.

Q. I will ask you if those things had not been done would the loss of production, in your opinion, have been greater?

Mr. Harris:

We object to the argument.

The Court:

I sustain the objection.

Mr. All:

We except. That is all, Mr. Russell.

The Court:

Mr. Russell, just a minute. I want to see if I skipped anything.

That is all.

(Witness excused.)

The Court:

We will take a recess.

(Thereupon proceedings were in recess from 10:45 to 11:05 A. M., at which time proceedings were resumed as follows):

The Court:

Who will you have, Mr. All.

Mr. All:

Mr. DeSollar.

1486 T. C. DeSOLLAR, being called as a witness, and being duly sworn, testified as follows:

Direct Examination.

(By Mr. All):

Q. What are your initials, Mr. DeSollar?

A. T. C.

Q. T. C. How do you spell your name?

A. D-e-S-o-l-l-a-r.

Q. Mr. DeSollar, what is your—who are you with at the present time?

A. I am with the Woodward Iron Company.

Q. How long have you been with the Woodward Iron Company?

A. Since May, 1924.

Q. Where were you prior to that time, Mr. DeSollar?

A. I was with the Quincy Mining Company at Hancock, Michigan, from 1908 until 1924.

Q. What did the Quincy Mining Company mine?

A. Copper.

Mr. Harris:

We object to that, if the Court please.

The Court:

Overruled.

The Witness:

Copper.

Q. You came here in 1924?

A. Yes, sir.

Q. In what capacity did you first go with the Woodward Iron Company?

A. Superintendent of the Red Ore Division of the Woodward Iron Company.

Q. How long did you remain superintendent of their Red Ore Division?

A. I remained superintendent until about the 1st of May, 1940.

Q. What have you been doing since that time, Mr. DeSollar?

A. I have been getting to open up the new Woodward Iron Company ore mine.

Q. Where is that?

A. That is here at Pyne.

Mr. Burr:
At where?

The Witness:
At Pyne.

Mr. Burr:
Where is that?

The Witness:
Right back of Muscoda.

Q. Is it in Jefferson County?

A. Jefferson County.

Q. Is it nearer the Woodward mine—who is the nearest mine?

A. It is closer to Bessemer, right back of Muscoda.

The Court:
When were you superintendent of the Woodward Iron Company?

The Witness:
Until May 1st, about that time. I was injured and I was in the hospital. I take it about that time.

Q. You say you were injured?

A. Yes, sir, I was injured in an accident in March, 1940.

Q. And you were in the hospital?

A. Yes, sir.

Q. Mr. DeSollar, have you a map which shows the Woodward workings?.

A. Yes, sir.

(Thereupon the map was placed upon the blackboard.)

Q. Mr. DeSollar, looking at that map as it hangs—is that the way you preferably hang that map for the purpose—

A. That is the way I usually look at the map. I usually reverse—

Q. Looking at the map, where is the pit mouth?

A. The pit mouth is right here.

Q. How many workings—

Mr. Harris:

Mr. All, may I interrupt?

If the Court pleases, the Woodward Iron Company didn't join in this series of bills. The Woodward Iron Company is not a party to the suit, and it seems to be that detailed operations of the Woodward Iron Company, what they have been doing, would not be material in this case.

What we would get into, if they go into that, then we would have to introduce evidence as to all the Woodward operations and the discussions between the parties, and yet they are not parties to the suit, so I think all this effort to try the Woodward Iron Company in this case without the Woodward Company being a party goes into matters that are immaterial and irrelevant, and transactions between other parties, and so I object to it.

The Court:

It is a question, Mr. Harris, of going in—I assume he is going to show their mode of operation as to time and so forth.

Mr. All:

Yes, sir, to show they are similarly situated.

The Court:

A similar mine?

Mr. All:

A similar mine, and it is introduced on behalf of all the plaintiffs.

Mr. Harris:

Then we will have to try—I will state to the Court I haven't interviewed Woodward Iron Company witnesses because they are not a party to the case, so that means we will just have to try the Woodward Iron Company as though they were actually in the case.

The Court:

I overrule the objection.

Q. Mr. DeSollar—

Mr. Harris:

We except, and also all the general objections about the time element.

Q. Looking at that map the pit mouth is right here at the top of the Board?

A. Yes, sir, Number 3.

Q. Does this map show any other slopes?

A. Yes; here is Number 1 slope, which was closed in December, 1931, and here is Number 2 slope, which was closed in 1928.

Q. Number 1 and Number 2 slopes are designated on this map?

A. Yes, sir.

Q. You are operating Number 3?

A. Number 3.

Q. Now, Mr. DeSollar, when you came with the Woodward Iron Company in 1924, how far down had that slope been driven?

A. Number 3 at that particular time was about here.

Q. Can you designate that by headings?

A. It was on one left. The pitch of the new slope was about 60 feet below, I should say, one right.

Q. And that point is about where, here?

A. It is approximately at this point right here (indicating on map).

Q. Now, in 1938, about October, 1938, and for some, say, six or eight months prior to that time, about how far—say the first of 1938, how far had that slope been driven?

A. Well, I would say about right in here.

Q. Now, what heading is that?

A. That is too small for me to see.

Q. Will you mark on this where, or let me mark on there, in 1938, where this slope had been driven?

A. Just put a line across here.

Q. Just put a line across here?

A. Yes, sir.

Q. That is where it was in 1938?

A. Yes, sir.

Q. Now, in 1934, from the pit mouth down, were there any headings driven off the slope?

A. Off the top slope?

Q. Yes, sir.

A. Up to 1934 they were all abandoned up to this top slope.

Q. Had they been mined out?

A. Yes, sir.

Q. What do you mean by top slope and lower slope in that mine?

A. This mine went down to about this point here and encountered a fault. Then we were compelled to drive a tunnel through to get to the ore body on the other side. Then we had what we term the middle slope down to another fault right here.

Q. Will you point out that fault?

A. That fault is right here (indicating on map).

Q. Draw it out to the edge.

A. (Witness draws on map.) Then we went up, drove an incline pioneer heading or man way to try to prospect to find where the ore was, and we found out going up on about a 25 degree pitch that the ore body pitched down.

Then we found the best way to handle this haulage was driving this haulage tunnel 2,058 feet through this rock, and we lowered all this ore by gravity, and all the trips down to where the slope is, and where we had a wye, and the haulage picked the cars up.

Q. Will you put a wye there at that wye?

A. Yes, sir.

Q. From that point on how did the work proceed?

A. About 1938 we acquired from the Tennessee Company—the old property line was along this line, coming right down here. We acquired by trade with the Tennessee Company—we acquired this area in here, and then—

Q. Does that area in there appear at the bottom of the map?

A. It is right here.

Q. The bottom of the map as the map is hung?

A. Yes, sir; that is right there.

Q. Now go ahead.

A. At that time we started up an intensive development work. We drove this Number 1 man way here; we

drove what we call the main southeast heading, which was designed primarily to divide this ground in about two equal halves.

Q. So you could drive in both directions?

A. So we would arrive in both directions, and then to augment that we drove what we call the right 20 cross to the booster.

Q. In a general way, Mr. DeSollar, will you explain the method of mining employed over there?

A. Well,—

Q. I mean driving the slopes and headings and things of that sort?

A. The slope was driven, and then approximately at right angles headings are driven, and when those headings are driven out to the property line our system has been to start stopes, which are driven at approximately right angles to the heading.

Q. I see.

A. And extract the tonnage from the stopes, the ore being loaded in tram cars.

Q. All sir. Now, in which direction are you moving in that extraction of the ore?

A. We are moving from the face down over the ramp into a mine car.

Q. Now, in driving a slope are you mining ore?

A. No, sir. That is development work.

Q. That is development work?

A. There is a certain amount of ore obtained, but we call that development work.

Q. I know, but you utilize the ore?

A. Yes, sir.

Q. In driving a heading, are you mining ore?

A. Well, it is the same thing.

Q. The same thing, you utilize the ore but you are driving a heading?

A. Yes, sir.

Q. You say your general plan is to drive your headings out in various directions?

A. Yes, sir.

Q. Then to begin stoping at the property line and come back to the heading and to the slope?

A. Yes, sir.

Q. Where did you start?

A. We started at the property line if it were possible. There have been times we couldn't stick to that plan, but that was the plan.

Q. Then which way did you drive?

A. Back towards the nuck.

Q. What is the nuck?

A. The nuck is the place where the company chain or company motor picks up the trips.

Q. Picks up the trips?

A. Yes, sir.

Q. Mr. DeSollar, can you tell us about what your—did you have change facilities there when you came in 1924?

A. Yes, sir, we had a bath house. We had at that time—we had two bath houses.

Q. Two bath houses?

A. Yes, sir.

Q. And later on did you have two or more or less?

A. One bath house—we removed everything from Number 2 and removed everything down to Number 3, and then we built an addition onto an already existing building and added another bath house, so we always had two bath houses.

Q. You still have two bath houses?

A. Yes, sir.

Q. What is a bath house used for?

A. A bath house is used for a man to take off his street clothes and get into his mining clothes.

Q. What percentage of the men used the bath houses?

A. I would say about 90 or 95 percent.

Q. Use the bath houses for changing?

A. Yes, sir.

Q. Where do the others change?

A. Change around—among the negroes they change around—sometimes in their own homes.

Q. In their own homes?

A. Yes, sir.

Q. And come over there already changed?

A. Yes, sir.

Q. Now,—

The Court:

Is there any charge for bath house facilities?

The Witness:

No charge whatever?

Q. Has that always been true?

A. Always—

Q. Never has been any charge at all since you have been there?

A. Not since I have been there.

Q. Now, can you point out for the Court the pit mouth on this map?

A. Here is the pit mouth of Number 3. The pit mouth of Number 2 is right here, and the pit mouth of Number 1 is right here (indicating on map).

Q. Now, we will confine the questions—the testimony to Number 2.

A. Number 2 or Number 3?

Q. Number 3, the one presently operated. Do you have a supply house over there?

A. Not at the pit mouth. We had a supply house about twenty—well, it is part of the bath house, the same building.

Q. The same building as the bath house?

A. Yes, sir.

Q. What do you keep at the supply house?

A. Tools of all sorts, steel, ropes, skidder blocks, hangers, picks, shovels,—

Q. Every kind of tool used in the mine?

A. Yes, sir.

Q. Mr. DeSollar, what sort of lighting system did the men employ to see in the mines?

A. Carbide lights.

Q. Lamps on their caps?

A. Lamps on their caps.

Q. Where did the men get their carbide?

A. They got their carbide out of small steel lockers at the pit mouth. They are about fifty feet from the pit mouth.

Q. Was that issued to them by the company?

A. No. The head miners or the contractors bought the carbide and it was issued and taken by the men—each contractor or head miner had a little locker.

Q. Had his own carbide?

A. Yes, sir.

Q. Where did they acquire the carbide?

A. They acquired that by purchase at one time through the store, or at another time through the supply house, or at any place they wanted to get it.

Q. At any place they wanted to get it?

A. Yes, sir.

Q. How long did that exist?

A. I would say all the time I was at Woodward.

Q. Up to the present time?

A. Yes, sir.

Q. The men got their carbide before starting down into the mine?

A. Yes.

Q. In 1934, how did the men get from the pit mouth to their working places?

A. 1934—

Q. 1924 when you came there?

A. '24,—confining it to Number 3?

Q. Confining it to Number 3.

A. They rode to 38 and walked through the tunnel, and they were practically at the face right then and there. There was a little walking in 1924 in the upper part—in the lower part of the top slope.

Q. You mean the travel time was not great at that time?

A. No, not great.

Q. Not great at that time?

A. No, sir.

Q. How were the men taken down from the pit mouth to that point?

A. Up until about 1928 there was a man car that was lowered from the surface to 38. That was a man car trip. It consisted of five cars that would hold ten men on each car.

Q. All right. Were those cars used for ore skips—

A. No, sir.

Q. —or were they specially—

A. There were specially—

Q. —for the men?

A. Yes, sir, with safety ropes on them.

Q. That was back as far as 1924?

A. That was 1924 to 1928 when we put in the skip haulage.

The Court:

Put what?

The Witness:

Skip haulage on the top slope.

Q. Now, that was in 1928?

A. I think it was 1928; sometime around that, I don't remember exactly.

Q. Now, what change did that bring about?

A. In that year we put in a new hoist engine, we revamped out tipple and we put on ten-ton skips and we widened the slope so we now hoist in balance; that is, when there is a skip at the top there is another skip at the bottom, and to augment getting the men in we built man cars, one man car to be attached to each skip in handling the men.

Q. So, at that time you took some of the men on the skip?

A. We took some in the skip and some in the man car.

Q. But the skip and man car were part of the same train?

A. Yes, sir, part of the same skip.

Q. That just increased the number of men that could go on that skip?

A. Yes, sir.

Q. Did you haul ore or anything else on the skip when the men were being hauled?

A. No, sir.

Q. Was any change made at that time with respect to the riding distance of the men?

A. Well, as we developed from 1924 on we installed a large hoist in what we term the middle slope, and after we had gotten down a sufficient distance we put a man car on there, but most of the time the men walked.

Q. All right, sir. Now, with the exception of the carbide which the men got at the top before going down, what else, if anything, did members of the production crew take with them on the way to their working places?

A. Coming from the surface?

Q. Coming from the surface.

A. About the only thing that a man would ever take down,—maybe once or twice or three times a year he might take a Stillson wrench.

Q. What would be the occasion for doing that?

A. The old wrench wearing out.

Q. Well, what was the usual method of supplying a wrench in that case?

A. He would go to the supply office and purchase them.

Q. Then, did the company have any means to deliver it to the working place?

A. If the man wished it to be delivered, it would be delivered. As a general rule the man—it was his own property, and he liked to see it got there.

Q. Where did he carry it?

A. He would carry it to the mouth of the mine. Then, after he got on, if it was a small tool like a Stillson wrench,—

Q. I did say how did he carry it?

A. In his hand.

Q. In his hand?

A. Yes, sir.

Q. Now, we get to 1938, Mr. DeSollar, and sometime prior to that and through 1938 up to May 1, 1941.

Did the company have a supply house near the top?

A. Yes, we—

Q. Or at the top?

A. We had a supply room for hangers, bolts and wedges, hose pipe, and things like that in a little building about fifty feet from the portal. We had a steel box right up close which was kept locked.

Q. Yes.

A. We found if we didn't those things would disappear that were sent up. That box was put in as a protection.

Q. How did the mine tools—how did they reach the working places of the working crews?

A. If it was a crew engine or drag scraper, or shovel loader, anything like that, that would be taken in with a regular crew between shifts or on a Sunday or Saturday night, usually, with a mechanic or electrician in charge of the party.

Q. What crew was that?

A. That might be a haulage crew or a rough crew.

Q. Was that done on company time?

A. That was done on company time.

Q. Men the company paid for doing that work?

A. Yes, sir.

Q. What about the other tools that were necessary and required?

A. Drill steel—we have an underground drill steel shop. We have an underground blacksmith shop. We have an underground drill sharpening shop and there are regular trips run on drill steel. The drill steel is taken at the—either at the end or beginning,—I am a little hazy to be exact,—that overlapping of the shifts.

There is a powder trip—

Q. Taken where?

A. Taken to the various crews.

Q. Of the working places?

A. Of the working places.

Q. How long had that existed prior to 1938 and since 1938?

A. Ever since I have been there after we put the underground shops in which was probably 1928 or 1929. I don't remember exactly about that.

Q. Now, what about the powder, Mr. DeSollar?

A. We have an underground powder magazine, and the powder was delivered on a Sunday morning, and the men, the haulage men or rock crew, under the supervision of a foreman, would take the powder and put it into the powder magazine.

Q. Where was that powder magazine?

A. That powder magazine was about 300 feet off the tunnel on one right—one left.

Q. 300 feet off the tunnel?

A. Yes, sir.

Q. Where—

A. There is a tunnel that goes through the fault right here, and that powder magazine is about right there (indicating on map).

Q. That is the first fault as you go down?

A. That is the first fault as you go down, yes, sir.

Q. How long has that powder magazine been at that place?

A. I would say about 1928.

Q. Since that time up to now?

A. Yes, sir.

Q. How did the production men get the powder at their working places?

A. As the head miners or contractors would come to the pit mouth he would issue a—give a requisition for so many boxes of powder. Everything was sold by boxes. Then, at 9:30, these boxes—this order would be filled by a company crew and taken over to the slope and carried down by the chainers plus a foreman, and taken to the various nucks.

Q. When you say nuck—you mean by nuck—

A. At the working faces.

Q. At the working faces?

A. Yes, sir.

Q. Did the men ever carry powder to their working places?

A. No, sir, because the motorman—everything we do—practically all the haulage is by motor,—90 percent is motor, and we would put the powder on a car going up to the heading and the powder would be delivered there in a small powder box.

Q. Has that been the consistent practice since you have been there?

A. It has been the consistent practice all the time, yes, sir.

Q. You say 9:30; you mean 9:30 in the morning?

A. Every morning.

Q. That is for the day shift?

A. Two shifts.

Q. When is it delivered for the other shift?

A. We don't make any night deliveries.

Q. You don't make any night deliveries?

A. No, sir.

Q. That was delivered at each place that wanted powder?

A. At each place that wanted powder, and asked for a requisition, signed a requisition.

Q. Now, from a period 1938 and since then up to May 1, 1941, what has been the working time for the underground men to commence work?

A. 6:30 in the morning until blasting time, which was 2:30.

Q. That is the production men?

A. Yes, sir.

Q. 6:30 in the morning to blasting time at 2:30?

A. 2:30.

Q. Where was the working place for the production crews?

A. The working place for the production crew was in close proximity to where they were drilling, blasting and dragging.

Q. That was at the face?

A. Yes, sir, that was at the face.

Q. So their work time started at 6:30?

A. 6:30, yes, sir.

Q. What time did the service crews—underground service crews,—what time did their work time start?

A. 6:30.

Q. What time did it end?

A. Three.

Q. You have one ending at 2:30 and one at three; what was the difference?

A. The service men always took 30 minutes for lunch.

Q. What about the production men—did they have a lunch period?

A. No, sir. They carried lunch with them and ate whenever they wanted to. Sometime they ate while they were working or waited until they got through drilling.

Q. You say they start at 6:30. What time would the first man trip go down? We will continue this to the day shift?

A. 5:30 when the first man trip went down.

Q. How many men would take the first man trip?.

A. Sixty men.

Q. Sixty men?

A. Yes, sir.

Q. And each other trip took sixty men?

A. Until the men were all in.

Q. How many trips did it take to take the men in? How many trips did you run?

A. With the present working force, about five trips.

Q. Say about 1938?

A. Yes, sir.

Q. Shortly prior to and about October—

A. About the same thing, about five trips.

Q. Will you tell us how long it takes—

A. It takes about seven minutes to lower a trip from the top of the slope.

Q. What do you mean by loading a skip?

A. Lowering.

Q. What about the intervals at which they would start?

A. It would be about nine minutes. You can lower them pretty rapidly, because everything is lined up in alignment. It is one, two, three, order.

Q. At that time, 1938, and for a period prior to that time and immediately following up to May 1, 1941, what

was the riding—can you give us where the men—what intervals of that travel was involved in riding?

A. From here to 38 it was riding on the top man trips.

Q. On what?

A. On the man trips.

Q. All right.

A. The man trips and skips. They were all hooked together.

Mr. Burr:

Give that distance, will you, please, sir?

The Witness:

It is 3000 feet.

Mr. Burr:

3000 feet.

The Witness:

Then, from this point here, around the tunnel, 1035 to the loading point on the middle slope.

Q. Now, is that 1035 feet walking distance?

A. That is walking distance.

The Court:

You mean they walk that distance?

The Witness:

They walked that distance, yes, sir.

Then it was optional whether a man wanted to ride or walk. We had work over here and we had work close by and the men—

Q. What you are pointing out is the heading sites?

A. Yes, sir, where work was going on at that time.

Q. Yes, sir.

A. Now, we have made this ride compulsory—

Q. We are talking about around 1938?

A. Well, there were a few places where the men got off and would walk,—a few places.

Q. They got of where?

A. They got off at this heading right here. We had some work up here. When they got off at ten,—ten right here, you see a travel line in red and some work.

Q. The travel line in red, is that at the right of the slope, looking down the slope?

A. That is to the right of the slope looking down the slope, yes, sir.

Q. You have two stopping places for that second slope trip?

A. Yes, sir.

Q. The first one is about how far from the starting point?

A. About 600 feet from the starting point. Most of the time the men preferred to walk.

Q. Preferred to walk?

A. Yes, sir. The next place was 10, almost to the end of the ride, and they rode there, those that wanted to, and those that didn't walked.

Q. That is how far from the commencement—

A. 2200 feet from this point to eleven right here. Then they walked the rest of the way into the various working places.

Q. Wherever their working places were?

A. Wherever their working places were.

Q. At that time did you have—at that time what was the remotest place from the place where the men would get off?

A. I imagine—

Q. The furtherest working place.

A. I imagine the furtherest working place was right over here in six right.

Q. Now, how far would that be from the nearest unloading point?

A. I will have to take a scale.

Mr. All:

Has anybody got a rule?

The Witness:

I have.

Q. All rght.

A. About 3600 feet.

Q. About 3600 feet?

A. 3600 feet to 4000 feet.

Q. That is the remotest place?

A. Yes, sir.

Q. Now, can you give me an idea—

The Court:

That is from where the men unloaded to where they worked?

The Witness:

Yes, sir.

Q. How far is that now?

A. Between 3500 and 4000 feet.

Q. Now, what would you say would be the shortest place to that unloading point? I am getting at around 1938, now, during the year 1938 and shortly following that, and prior to that time.

A. There were some working places up—there were some working places up in here about five or six hundred feet.

Q. Five or six hundred feet?

A. Yes, sir.

Q. From there?

A. Yes, sir.

Q. That is 1938 now?

A. Yes, sir.

Q. Now, at what time did you—you say this second trip was optional?

A. Yes, sir.

Q. And that remained optional until when?

A. Until May 1, 1941.

Q. It remained optional until May 1, 1941?

A. Yes, sir.

Q. About what percentage of the men prior to that time used the ride, the trip, instead of walking?

A. Well, I would say 99 percent walked.

Q. 99 percent walked?

A. They all rode up.

The Court:

Was it down grade?

The Witness:

It was down grade walking down.

The Court:

Going to work?

The Witness:

Going to work, yes, sir.

Q. It had some grade coming back?

A. Coming up, yes, sir.

Q. Can you give us about the degree of that grade?

A. Oh, I would say about twelve percent.

Q. Did it vary?

A. No, it was fairly constant. I might say—that is not a correct statement. It started steep, and then as it got down into the flat, it was just like the bowl of a saucer, rght flat.

Q. Now, the service men, I presume, got off at the nearest point to where—to their working places?

A. To where they do work.

Q. With respect to the service men, Mr. DeSollar, did they have any occasion to take any tools or implements or anything in the mine from the top except the carbide?

A. No, sir. Picks and shovels and wrenches, everything like that would be furnished inside.

Q. Furnished them inside?

A. Yes, sir.

Q. With respect to the production men, did they use oil?

A. Yes, sir.

Q. What was the—what has been the method of getting oil to the working places?

A. We have an underground storage house at seven right. Seven right is right in here (indicating on map). And the men from the—coming off of work would bring their empty cans there, and in going back to work, going to their working places the next day, the cans would be filled after seven o'clock and a drill man or a drill helper or mucker would carry the oil up to the working place.

Q. When—did you have a regular time for issuing that oil or when the men—

A. Yes, sir, seven o'clock.

Q. Seven o'clock?

A. Yes, sir.

Q. That was the same time—that was the work time?

A. No, that was after work time.

Q. After what?

A. After work time.

Q. Did you use the detachable bits on the drills?

A. We have about nine places, nine development places, or did have. We only have got one place now using the detachable bits.

Q. What did you have in 1938 and for a time prior to that and since?

A. That was the regular drill steel.

Q. That was the regular drill steel?

A. Yes, sir.

Q. You had no detachable bits at that time?

A. No detachable bits.

Q. Had you had detachable bits prior to that time?

A. We had a few we were trying out. They were in an experimental nature, an experiment.

Q. What have you had in the way of detachable bits since that time?

A. All our development places are on the detachable bits.

Q. And the number of development places, as you stated, varies from time to time?

A. They vary, yes, sir.

Q. Mr. DeSollar, will you outline the supplies which are needed by the production crews?

A. I didn't get that question.

Q. The supplies which are needed by the production crews and state where they are kept, and how they get to the working places, those supplies.

A. A contract crew or head miner crew will need a water hose and an air hose, maybe two water hose and an air hose. The water pipe is sent up to the pit mouth by the truck, carried down to the drill repair shop at the end of the first top tunnel where we have a machine that clamps the nipple on the hose pipe.

Q. Yes, sir.

A. It is then loaded in a car and sent to the working face, sent to the nuck, and then the—the contractors' motor trip will carry it on into the face.

The same thing is true with a drill machine.

The same thing is true with skidder blocks.

Drill steel I have explained.

Wrenches, or anything like that, as I stated, the men may carry them down, but if they don't want to they will be sent into the place.

Q. Are any of the heavier implements or heavier parts taken down by the men?

A. No. Drag ropes, scrapers and things like that are all delivered.

Q. Drills, what about drills?

A. Drills are put on a car and sent into the place.

Q. Put on a car? What kind of car are you talking about?

A. Regular mine car.

Q. Who has charge of that hauling, that transportation?

A. Either the motorman or chainer or the haulage men, depending when the work is being done.

Q. Do the production men have anything to do with that movement?

A. No, except pick it up at the nuck and carry it in by motor to the working place.

Q. And you say the nuck is part of their working place?

A. Yes, sir.

Mr. Harris:

We object to him leading him, Judge.

Mr. All:

He had stated it before.

The Court:

He had stated it before.

Mr. Harris:

I didn't catch it before. Mr. All led him before.

The Court:

What did you say the nuck is?

The Witness:

The nuck is where the company workers pick up the cars of ore loaded by the head miner or the contractor.

The Court:
That is how far from the working place?

The Witness:
That may be 300 to a thousand feet.

The Court:
Then when you say it is carried to the nuck, it is not necessarily carried to the working place?

The Witness:
No, sir, if we define the working place as the working face. The miner is responsible for it from the nuck.

The Court:
When you carry it to the nuck the production men pick it up and carry it to the working place?

The Witness:
Yes, sir.

Q. What do the production men have to do with the nuck? Do they have to bring anything to the nuck?
A. They bring the cars of loaded ore to the nuck and take the empty cars—
Q. That is a part of the producing crew's work, as I understand; that is, to bring what they produce to the nuck?
A. Yes, sir.
Q. They bring it after the shift—

Mr. Harris:
We object to him leading him.

Mr. All:
I am just asking him. I don't know.

Q. When do the men bring the ore to the nuck?

A. Whenever the trip is loaded.

Q. Whenever the trip is loaded?

A. Yes, sir.

Q. Is that a part of the production men's work, to bring the ore to the nuck?

A. Yes, sir.

Q. Who takes the empty cars up to the face from the nuck?

A. The—

Q. Up to the face?

A. The production men.

Q. The production men?

A. Yes, sir.

Q. In other words, the movement of the empty and loaded cars in the working place from the nuck to the face is conducted by whom?

A. By the production men.

Q. By the production crews?

A. Yes, sir.

Q. What about the drill bits? How do they get—

The Court:

Mr. All, I think we are going into too great detail. You have been over that once.

Mr. All:

That is all right is we have.

The Court:

I think you could refer to all that in one question and let him state—

Q. You say they are all delivered there except—What exceptions are there to the practice and the rule that these tools and supplies are delivered to the working places or the nucks?

A. I don't understand that question.

Q. What is there taken—what is taken down by the men, the production crews?

A. The drill bit, a needle, drill needle, and possibly—an occasional wrench. The needles will be occasional,—the needles will be occasional. The bits are every day by one man.

Q. By one man in the crew?

A. Yes, sir.

Q. How big are those drill bits?

A. About 2⅛ inches in diameter, about 2½ inches long, weight about three-quarters of a pound.

Q. How do they take them?

A. Take them looped on a little wire.

Q. Where are they taken from?

A. There is a place outside the drill shop and they are hung there. The man deposits his dull bits the night before and the next morning he takes sharp ones.

Q. Mr. DeSollar, beginning with May 1, 1940, did you make any changes—1941?

A. Yes, sir. Time clocks were put in in a little building right outside of the—about 50 feet from the portal.

The top man car was lengthened ten feet.

We added one additional man car on the middle slope.

We built six man cars to transport men in the tunnel, through the tunnel.

Q. Well, what about where the men check in and check out now?

A. A man now comes to the building; he takes his card and he checks in and he gets his carbide and he goes on through.

Q. Well, from the time you have been up there until May 1, 1941, how was work time computed?

Mr. Harris:

The same objection we have made heretofore to that question, if Your Honor please.

Mr. All:
You mean as to prior to 1938?

Mr. Harris:
Yes.

The Court:
Overruled.

A. From abstracts signed—

Q. I say how was the time computed; was it face to face or portal to portal?

A. Face to face.

Q. How has it been since May 1, 1940?

A. 1941?

Q. 1941.

A. It has been portal to portal.

Q. Portal to portal?

A. Yes, sir.

Q. Go ahead with your method of checking in now since May 1, 1941.

A. Then he arrives over at a little aisle ready to get on the man trip.

Q. Is that when his time starts?

A. No, sir, his time starts immediately he punches the clock.

Q. When does it end?

A. When he punches the clock. It is just the reverse. He gets off the man trip and punches the card and goes on out the door.

Q. As I understand you have an 8-hour day now including traveling time?

A. Yes, sir.

Q. And before you had an 8-hour day excluding traveling time?

Mr. Harris:
We object to that.

The Court:
Overruled.

A. Yes, sir.

Mr. All:
That is all.

(To Mr. Burr):
Do you have any questions?

Mr. Burr:
Just a few.

Mr. All:
You go ahead.

(By Mr. Burr):
Q. Where were these copper mines you worked in before you came here?
A. Hancock, Michigan.
Q. Do you know the name of the company?
A. Quincy Mining Company.
Q. I don't know whether I quite understood you.
A. Quincy Mining Company.
Q. You say back prior to May 1, 1941—I wanted to try to get the longest distance the men traveled as near as I could. As I understand they went down the first slope to the first fault?
A. Yes, sir.
Q. That was how far?
A. About 3,000 feet.
Q. Then they went through a tunnel?
A. Yes, sir.

Q. That was about a thousand feet?

A. Yes, sir.

Q. All right.

A. Then they walked to ten.

Q. That was about how far?

A. About 1900 feet.

Q. The furtherest was, you told us, between 3500 and 4,000 feet?

A. Yes, sir.

Q. And the shortest one about four or five hundred feet?

A. No; it was a longer distance than that.

Q. Where was the place the men, 95 percent of them, preferred to walk rather than ride?

A. Right there (indicating on map).

Q. At the first fault?

A. Where we got into the ore body on the other side of the fault.

Q. What was that distance they preferred to walk?

A. The majority of the work was over in this area (indicating on map).

Q. What was the furtherest distance?

A. I would say the distance I gave you there was about correct.

Q. About correct?

A. Yes, sir.

Q. At Woodward, I believe, your business is making pig iron?

A. Pig iron.

Q. Don't make manufactured products?

A. No, sir.

Q. Is the Sloss Company a competitor of yours?

A. I can only say from hearsay. I can't answer you directly.

Q. Is that your understanding?

A. Yes, sir.

Q. They both sell pig iron in the open market?

A. Yes, sir.

Q. One other question. This new mine you say you are engaged in opening for the Woodward Company is just immediately behind Muscoda?

A. Yes, sir.

Q. Are you building a new slope there?

A. No, sir, it is a vertical shaft. It was put down a good many years ago.

Q. It is a vertical shaft?

A. Yes, sir.

Q. How far will that shaft go down before you strike the ore?

A. The ore is down about 1250 feet.

Q. When you get to the bottom of the vertical shaft will you have to turn headings off?

A. Yes, sir.

Q. Will there be more than one level?

A. We think it will be right down in the flat.

Q. Just one level?

A. Yes, sir.

Q. You are familiar with the mines in Michigan?

A. Yes, sir.

Q. And they run a series of levels?

A. Yes, sir.

Q. Is yours going to be of the vertical character—

Mr. Harris:

I don't see where all that has anything to do with this case, a mine they are going to open up here entirely—a mine entirely different from this system.

Mr. Burr:

If Your Honor please, you haven't got the Tennessee Company named in this law; you have not got the Woodward Company named. This is the same territory—

The Court:

I—

Mr. Burr:

It is competitive conditions we are interested in. We haven't any question here of sweat shop wages. That is out of the question.

Mr. Harris:

Talking about a competitive industry, if there were ever an industry since I have lived here, since 1912, if there were ever an industry in which there was no competition it is the steel industry. If that argument is to be made we have a right to go into the Federal Trade Commission investigation, their holding on Pittsburgh plus, their basing point system, how they say Birmingham will be a basing point for those items, and Youngstown for those items, and Pittsburgh for those items, so when you get into a question of competitive conditions, it carries us into a problem of higher mathematics to say whether there are any competitive conditions at all.

Mr. Burr:

That is no reason why you should interrupt me in the middle of a sentence.

Mr. Harris:

I don't have to sit here and let him put stuff like that in the record. If I heeded him, I would never object.

Mr. Burr:

That is not the kind of competitive condition I am talking about. A high school boy, anyone above a moron would know if the Woodward people were starting an operation that didn't involve any traveling time, and Sloss Company has two or three miles of traveling time, and Woodward none at all, that would place Sloss at a com-

petitive disadvantage, and you don't have to go into Pittsburgh plus at all.

What I have been developing here and expect to continue to develop in this case is that when you take the ruling announced, the interpretation of the Administrator, —and they have traveled the world over,—it doesn't apply to Tennessee Company's mines, it doesn't apply to Woodward Company's mines, it doesn't apply to Sloss Company's mines, but applies to all underground mines.

What I am seeking to show by this very witness is that right here on this very same ore seam in this very same territory there are differences in traveling time. If that is not evidence why have they—they have been running all over the country. They have taken us from Minneapolis to Denver to see conditions out there. I think that eventually that may come into it.

What I am seeking to do here is to show conditions on Red Mountain, and it does have a significant bearing in this case.

Mr. Harris:

Now, if the Court pleases, I am not representing the Wage & Hour Administrator,—

The Court:

They are parties.

Mr. Burr:

They are parties here in this case.

Mr. Harris:

I know, but I am the man that objected and I am not representing the Administrator, and I haven't taken any depositions at Denver or Minneapolis or anywhere else. I haven't appeared in the taking of any depositions.

In all fairness to the Court, how can you say it is a competitive condition when you know, if they dig a

vertical shaft, if takes money to dig a vertical shaft. It takes time to dig a vertical shaft; it takes money to bring men out of the vertical shaft. We don't know how much money the Woodward Company has put into that vertical shaft.

The Court:
We are not going into that.

Mr. Harris:
They are using an anticipated condition that hasn't arisen in the Birmingham district. We haven't any vertical shaft proposition.

The Court:
You have the Gulf States Steel down at—the Republic at Shannon.

Mr. Harris:
They are not operating.

The Court:
They were several years ago.

Mr. Burr:
They have quit operatng there. Of course, at the other mine they are operating a shaft that is very short.

The Court:
I will overrule the objection. We are not going into detail.

Q. You are proposing a vertical shaft?
A. It is a vertical shaft.
Q. When you get down to the bottom of that shaft, you strike ore?

A. Yes, sir.

Q. Will you have to drive headings like you do in the old operations?

A. We will have to leave a property sufficiently pillared, and by the time we get that first pillaring we will have determined which is the best course to follow in development work.

Q. And your travel time will be determined by how you follow it?

A. Yes, sir.

Q. When you first strike the ore there will be no travel time at all?

A. It will be right there.

Mr. Burr:

That is all I want to ask.

Mr. All:

I overlooked one question.

(By Mr. All):

Q. You have stated how many trips you made and the intervals. What is the total time?

A. I would say from about 40 to 45 minutes from the time we start on the basis of five—

Q. So your last trip was run a sufficient length of time to let all the men get to their working places?

A. Yes, sir.

The Court:

Is this map in evidence?

Mr. All:

I want to put it in evidence. We will introduce this on behalf of the plaintiffs.

Mr. Burr:
All this is on behalf of the plaintiffs.

Mr. All:
Suppose we put that Woodward map in as Exhibit W-1.

Mr. Harris:
We object to that map on all the grounds stated when I objected to going into the Woodward operations.

The Court:
You are not objecting because it is not identified by the proper party?

Mr. Harris:
No, sir. He says it is correct.

Mr. All:
Put that P-W-1. It is for all the plaintiffs.

Mr. Harris:
Call it Joint Exhibit 1.

Mr. All:
Just put it Joint Exhibit 1.—Plaintiff's Joint Exhibit Number 1.

Mr. Burr:
Off the record.

(Here followed an off-the-record discussion.)

Mr. All:
Go ahead and put it a Sloss Exhibit.

The Clerk:
Sloss Exhibit Number 23.